

## 7 USC Ch. 107: RENEWABLE ENERGY RESEARCH AND DEVELOPMENT

### From Title 7—AGRICULTURE

## CHAPTER 107—RENEWABLE ENERGY RESEARCH AND DEVELOPMENT

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## CODIFICATION

Title IX of the Farm Security and Rural Investment Act of 2002, which comprises this chapter, was originally enacted by Pub. L. 107–171, [title IX, May 13, 2002](#), 116 Stat. 475, and amended by Pub. L. 108–199, [div. A, title VII, §778\(b\), Jan. 23, 2004](#), 118 Stat. 41; Pub. L. 109–58, [title II, §205, title IX, §943\(a\), \(b\), Aug. 8, 2005](#), 119 Stat. 654, [880, 881](#); Pub. L. 109–171, [title I, §1301, Feb. 8, 2006](#), 120 Stat. 6. Such title is shown herein, however, as having been added by Pub. L. 110–234, [title IX, §9001\(a\), May 22, 2008](#), 122 Stat. 1303, and Pub. L. 110–246, [§4\(a\), title IX, §9001\(a\), June 18, 2008](#), 122 Stat. 1664, [2064](#), without reference to such intervening amendments because of the extensive revision of the title's provisions by Pub. L. 110–234 and Pub. L. 110–246, which amended the title identically. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

## §8101. Definitions

Except as otherwise provided, in this chapter:

### (1) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

### (2) Advisory Committee

The term "Advisory Committee" means the Biomass Research and Development Technical Advisory Committee established by section 8108(d)(1) of this title.

### (3) Advanced biofuel

#### (A) In general

The term "advanced biofuel" means fuel derived from renewable biomass other than corn kernel starch.

#### (B) Inclusions

Subject to subparagraph (A), the term "advanced biofuel" includes—

- (i) biofuel derived from cellulose, hemicellulose, or lignin;
- (ii) biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);
- (iii) biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;
- (iv) diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;
- (v) biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass;

(vi) butanol or other alcohols produced through the conversion of organic matter from renewable biomass; and

(vii) other fuel derived from cellulosic biomass.

#### **(4) Biobased product**

The term "biobased product" means a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is—

(A) composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials, renewable chemicals, and forestry materials; or

(B) an intermediate ingredient or feedstock.

#### **(5) Biofuel**

The term "biofuel" means a fuel derived from renewable biomass.

#### **(6) Biomass conversion facility**

The term "biomass conversion facility" means a facility that converts or proposes to convert renewable biomass into—

(A) heat;

(B) power;

(C) biobased products; or

(D) advanced biofuels.

#### **(7) Biorefinery**

The term "biorefinery" means a facility (including equipment and processes) that—

(A) converts renewable biomass or an intermediate ingredient or feedstock of renewable biomass into any 1 or more, or a combination, of—

(i) biofuels;

(ii) renewable chemicals; or

(iii) biobased products; and

(B) may produce electricity.

#### **(8) Board**

The term "Board" means the Biomass Research and Development Board established by section 8108(c) of this title.

#### **(9) Forest product**

##### **(A) In general**

The term "forest product" means a product made from materials derived from the practice of forestry or the management of growing timber.

##### **(B) Inclusions**

The term "forest product" includes—

(i) pulp, paper, paperboard, pellets, lumber, and other wood products; and

(ii) any recycled products derived from forest materials.

#### **(10) Indian tribe**

The term "Indian tribe" has the meaning given the term in section 5304 of title 25.

#### **(11) Institution of higher education**

The term "institution of higher education" has the meaning given the term in section 1002(a) of title 20.

#### **(12) Intermediate ingredient or feedstock**

The term "intermediate ingredient or feedstock" means a material or compound made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials, that are subsequently used to make a more complex compound or product.

#### **(13) Renewable biomass**

The term "renewable biomass" means—

(A) materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 1702 of title 43) that—

(i) are byproducts of preventive treatments that are removed—

(I) to reduce hazardous fuels;

(II) to reduce or contain disease or insect infestation; or

(III) to restore ecosystem health;

(ii) would not otherwise be used for higher-value products; and

(iii) are harvested in accordance with—

- (I) applicable law and land management plans; and
- (II) the requirements for—
  - (aa) old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 6512 of title 16; and
  - (bb) large-tree retention of subsection (f) of that section; or

(B) any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including—

- (i) renewable plant material, including—
  - (I) feed grains;
  - (II) other agricultural commodities;
  - (III) other plants and trees; and
  - (IV) algae; and
- (ii) waste material, including—
  - (I) crop residue;
  - (II) other vegetative waste material (including wood waste and wood residues);
  - (III) animal waste and byproducts (including fats, oils, greases, and manure); and
  - (IV) food waste and yard waste.

#### **(14) Renewable chemical**

The term "renewable chemical" means a monomer, polymer, plastic, formulated product, or chemical substance produced from renewable biomass.

#### **(15) Renewable energy**

The term "renewable energy" means energy derived from—

- (A) a wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal, or hydroelectric source; or
- (B) hydrogen derived from renewable biomass or water using an energy source described in subparagraph (A).

#### **(16) Renewable energy system**

##### **(A) In general**

Subject to subparagraph (C), the term "renewable energy system" means a system that produces usable energy from a renewable energy source.

##### **(B) Inclusions**

The term "renewable energy system" includes—

- (i) distribution components necessary to move energy produced by a system described in subparagraph (A) to the initial point of sale; and
- (ii) other components and ancillary infrastructure of a system described in subparagraph (A), such as a storage system.

##### **(C) Limitation**

A system described in subparagraph (A) may not include a mechanism for dispensing energy at retail.

#### **(17) Secretary**

The term "Secretary" means the Secretary of Agriculture.

(Pub. L. 107–171, title IX, §9001, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1303, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2064; amended Pub. L. 113–79, title IX, §9001, Feb. 7, 2014, 128 Stat. 926; Pub. L. 115–334, title IX, §9001, Dec. 20, 2018, 132 Stat. 4883.)

## **CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

## **PRIOR PROVISIONS**

A prior section 8101, Pub. L. 107–171, title IX, §9001, May 13, 2002, 116 Stat. 475; Pub. L. 109–58, title IX, §943(a)(1), Aug. 8, 2005, 119 Stat. 880, contained definitions for this chapter, prior to the general amendment of this chapter by Pub. L. 110–246.

## **AMENDMENTS**

**2018**—Par. (4)(A). Pub. L. 115–334, §9001(1), substituted "agricultural materials, renewable chemicals," for "agricultural materials".

Par. (7)(A). Pub. L. 115–334, §9001(2), substituted "or an intermediate ingredient or feedstock of renewable biomass into any 1 or more, or a combination, of—" and cls. (i) to (iii) for "into biofuels and biobased products; and".

Par. (16)(A). Pub. L. 115–334, §9001(3)(A), substituted "subparagraph (C), the term 'renewable energy system' means a system that produces usable energy from a renewable energy source." for "subparagraph (B), the term 'renewable energy system' means a system that—

"(i) produces usable energy from a renewable energy source; and

"(ii) may include distribution components necessary to move energy produced by such system to the initial point of sale."

Par. (16)(B), (C). Pub. L. 115–334, §9001(3)(B), (C), added subpar. (B) and redesignated former subpar. (B) as (C).

**2014**—Par. (9). Pub. L. 113–79, §9001(2), added par. (9). Former par. (9) redesignated (10).

Par. (10) to (13). Pub. L. 113–79, §9001(1), redesignated pars. (9) to (12) as (10) to (13), respectively. Former par. (13) redesignated (15).

Par. (14). Pub. L. 113–79, §9001(3), added par. (14)

Par. (15). Pub. L. 113–79, §9001(1), redesignated par. (13) as (15).

Par. (16). Pub. L. 113–79, §9001(4), added par. (16).

Par. (17). Pub. L. 113–79, §9001(1), redesignated par. (14) as (17).

## EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of this title.

## SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–199, *div. A, title VII, §778(a), Jan. 23, 2004*, 118 Stat. 41, provided that: "This section [enacting section 8109 of this title] may be cited as the 'Sun Grant Research Initiative Act of 2003'."

## BIOMASS RESEARCH AND DEVELOPMENT

Pub. L. 106–224, *title III, June 20, 2000*, 114 Stat. 428; as amended by Pub. L. 107–171, *title IX, §9008, May 13, 2002*, 116 Stat. 483; Pub. L. 108–148, *title II, §201, Dec. 3, 2003*, 117 Stat. 1901; Pub. L. 109–58, *title IX, §941, Aug. 8, 2005*, 119 Stat. 873, known as the Biomass Research and Development Act of 2000, and formerly set out as a note under this section, provided temporary authority for the Secretaries of Agriculture and Energy to promote biomass research and development. As amended by Pub. L. 109–58, the program became permanent, and title III of Pub. L. 106–224 was transferred to chapter 112 (§8601 et seq.) of this title. Subsequently, title III of Pub. L. 106–224 was repealed by Pub. L. 110–246, *title IX, §9001(b), June 18, 2008*, 122 Stat. 2095.

## BIOFUELS AND RURAL ECONOMIC DEVELOPMENT

Memorandum of President of the United States, May 5, 2009, 74 F.R. 21531, provided:

Memorandum for the Secretary of Agriculture, the Secretary of Energy, [and] the Administrator of the Environmental Protection Agency

In the Nation's ongoing efforts to achieve energy independence, biomass and biofuels promise to play a key role by providing the Nation with homegrown sustainable energy options and energizing our economy with new industries and jobs. While producing clean renewable fuels locally is a powerful engine of economic growth, they must be developed and used in a way that limits environmental impact. Today, the Environmental Protection Agency (EPA) is issuing a Notice of Proposed Rulemaking, as required by the Energy Independence and Security Act of 2007, to set new national renewable fuel standards and implement those standards. The public will have an opportunity to provide input on this proposal through a 60-day comment period, and the EPA is conducting peer reviews on key aspects of the environmental impact assessments within the proposal.

In order to shepherd our Nation's development of this important industry and to coordinate interagency policy, I hereby establish a Biofuels Interagency Working Group (Working Group), to be co-chaired by the Secretaries of Agriculture and Energy and the Administrator of the EPA. This Working Group will coordinate with the National Science and Technology Council's Biomass Research and Development Board in undertaking its work. The responsibilities of the Working Group shall include:

(a) Developing the Nation's first comprehensive biofuel market development program, which shall use existing authorities and identify new policies to support the development of next-generation biofuels, increase flexible fuel vehicle use, and assist in retail marketing efforts;

(b) Coordinating infrastructure policies affecting the supply, secure transport, and distribution of biofuels; and

(c) Identifying new policy options to promote the environmental sustainability of biofuels feedstock production, taking into consideration land use, habitat conservation, crop management practices, water efficiency and water quality, as well as lifecycle assessments of greenhouse gas emissions.

Alongside the Working Group's efforts, the Secretary of Agriculture may pursue other important biofuel development efforts. The Rural Development Act of 1972 and the Rural Development Policy Act of 1980 direct the Secretary of Agriculture to develop, in coordination with State and local governments, a nationwide rural development program to assure rural America's health and prosperity. In keeping with that mandate, and recognizing the key role rural America will play in the development of biofuel technology and development, I request that the Secretary of Agriculture take the following steps, to the extent permitted by law:

(a) Immediately begin restructuring existing investments in renewable fuels as needed to preserve industry employment; and

(b) Develop a comprehensive approach to accelerating the investment in and production of American biofuels and reducing our dependence on fossil fuels by providing, within 30 days, under the authorities made available in the Food, Conservation, and Energy Act of 2008:

(i) Loan guarantees for the development, construction, and retrofitting of commercial-scale biorefineries and grants to help pay for the development and construction costs of demonstration-scale biorefineries;

(ii) Expedited funding to encourage biorefineries to replace the use of fossil fuels in plant operations by installing new biomass energy systems or producing new energy from renewable biomass;

(iii) Expedited funding to biofuels producers to encourage production of next-generation biofuels from cellulosic biomass and other feedstocks;

(iv) Expansion of the Renewable Energy Systems and Energy Efficiency Improvements Program, which has been renamed the Rural Energy for America Program, to include hydroelectric source technologies, energy audits, and higher loan guarantee limits; and

(v) Guidance and support for collection, harvest, storage, and transportation assistance for eligible materials for use in biomass conversion facilities.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Secretary of Agriculture is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

## **§8102. Biobased markets program**

### **(a) Federal procurement of biobased products**

#### **(1) Definition of procuring agency**

In this subsection, the term "procuring agency" means—

(A) any Federal agency that is using Federal funds for procurement; or

(B) a person that is a party to a contract with any Federal agency, with respect to work performed under such a contract.

#### **(2) Procurement preference**

##### **(A) In general**

##### **(i) Procuring agency duties**

Except as provided in clause (ii) and subparagraph (B), after the date specified in applicable guidelines prepared pursuant to paragraph (3), each procuring agency shall—

(I) establish a procurement program, develop procurement specifications, and procure biobased products identified under the guidelines described in paragraph (3) in accordance with this section;

(II) with respect to items described in the guidelines, give a procurement preference to those items that—

(aa) are composed of the highest percentage of biobased products practicable; or

(bb) comply with the regulations issued under section 6914b–1 of title 42; and

(III) establish a targeted biobased-only procurement requirement under which the procuring agency shall issue a certain number of biobased-only contracts when the procuring agency is purchasing products, or purchasing services that include the use of products, that are included in a biobased product category designated by the Secretary.

**(ii) Exception**

The requirements of clause (i)(I) to establish a procurement program and develop procurement specifications shall not apply to a person described in paragraph (1)(B).

**(B) Flexibility**

Notwithstanding subparagraph (A), a procuring agency may decide not to procure items described in that subparagraph if the procuring agency determines that the items—

- (i) are not reasonably available within a reasonable period of time;
- (ii) fail to meet—
  - (I) the performance standards set forth in the applicable specifications; or
  - (II) the reasonable performance standards of the procuring agencies; or

(iii) are available only at an unreasonable price.

**(C) Minimum requirements**

Each procurement program required under this subsection shall, at a minimum—

- (i) be consistent with applicable provisions of Federal procurement law;
- (ii) ensure that items composed of biobased products will be purchased to the maximum extent practicable;
- (iii) include a component to promote the procurement program;
- (iv) provide for an annual review and monitoring of the effectiveness of the procurement program; and
- (v) adopt 1 of the 2 policies described in subparagraph (D) or (E), or a policy substantially equivalent to either of those policies.

**(D) Case-by-case policy****(i) In general**

Subject to subparagraph (B) and except as provided in clause (ii), a procuring agency adopting the case-by-case policy shall award a contract to the vendor offering an item composed of the highest percentage of biobased products practicable.

**(ii) Exception**

Subject to subparagraph (B), an agency adopting the policy described in clause (i) may make an award to a vendor offering items with less than the maximum biobased products content.

**(E) Minimum content standards**

Subject to subparagraph (B), a procuring agency adopting the minimum content standards policy shall establish minimum biobased products content specifications for awarding contracts in a manner that ensures that the biobased products content required is consistent with this subsection.

**(F) Certification**

After the date specified in any applicable guidelines prepared pursuant to paragraph (3), contracting offices shall require that vendors certify that the biobased products to be used in the performance of the contract will comply with the applicable specifications or other contractual requirements.

**(3) Guidelines****(A) In general**

The Secretary, after consultation with the Administrator, the Administrator of General Services, and the Secretary of Commerce (acting through the Director of the National Institute of Standards and Technology), shall prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this subsection.

**(B) Requirements**

The guidelines under this paragraph shall—

- (i) designate those items (including finished products) that are or can be produced with biobased products (including biobased products for which there is only a single product or manufacturer in the category) that will be subject to the preference described in paragraph (2);
- (ii) designate those intermediate ingredients and feedstocks that are or can be used to produce items that will be subject to the preference described in paragraph (2);
- (iii) automatically designate items composed of intermediate ingredients and feedstocks designated under clause (ii), if the content of the designated intermediate ingredients and feedstocks exceeds 50 percent of the item (unless the Secretary determines a different composition percentage is appropriate);
- (iv) set forth recommended practices with respect to the procurement of biobased products and items containing such materials;
- (v) require reporting of quantities and types of biobased products purchased by procuring agencies;
- (vi) promote biobased products, including forest products, that apply an innovative approach to growing, harvesting, sourcing, procuring, processing, manufacturing, or application of biobased products regardless of the date of entry into the marketplace;

(vii) as determined to be necessary by the Secretary based on the availability of data, provide information as to the availability, relative price, performance, and environmental and public health benefits of such materials and items; and

(viii) take effect on the date established in the guidelines, which may not exceed 1 year after publication.

### **(C) Information provided**

Information provided pursuant to subparagraph (B)(v) <sup>1</sup> with respect to a material or item shall be considered to be provided for another item made with the same material or item.

### **(D) Prohibition**

Guidelines issued under this paragraph may not require a manufacturer or vendor of biobased products, as a condition of the purchase of biobased products from the manufacturer or vendor, to provide to procuring agencies more data than would be required to be provided by other manufacturers or vendors offering products for sale to a procuring agency, other than data confirming the biobased content of a product.

### **(E) Qualifying purchases**

The guidelines shall apply with respect to any purchase or acquisition of a procurement item for which—

- (i) the purchase price of the item exceeds \$10,000; or
- (ii) the quantity of the items or of functionally-equivalent items purchased or acquired during the preceding fiscal year was at least \$10,000.

### **(F) Required designations**

Not later than 1 year after February 7, 2014, the Secretary shall begin to designate intermediate ingredients or feedstocks and assembled and finished biobased products in the guidelines issued under this paragraph.

## **(4) Administration**

### **(A) Office of Federal Procurement Policy**

The Office of Federal Procurement Policy, in cooperation with the Secretary, shall—

- (i) coordinate the implementation of this subsection with other policies for Federal procurement;
- (ii) annually collect the information required to be reported under subparagraph (B) and make the information publicly available;
- (iii) take a leading role in informing Federal agencies concerning, and promoting the adoption of and compliance with, procurement requirements for biobased products by Federal agencies; and
- (iv) not less than once every 2 years, submit to Congress a report that—
  - (I) describes the progress made in carrying out this subsection; and
  - (II) contains a summary of the information reported pursuant to subparagraph (B).

### **(B) Other agencies**

To assist the Office of Federal Procurement Policy in carrying out subparagraph (A)—

- (i) each procuring agency shall submit each year to the Office of Federal Procurement Policy, to the maximum extent practicable, information concerning—
  - (I) actions taken to implement paragraph (2);
  - (II) the results of the annual review and monitoring program established under paragraph (2)(C)(iv);
  - (III) the number and dollar value of contracts entered into during the year that include the direct procurement of biobased products;
  - (IV) the number of service and construction (including renovations) contracts entered into during the year that include language on the use of biobased products; and
  - (V) the types and dollar value of biobased products actually used by contractors in carrying out service and construction (including renovations) contracts during the previous year; and

(ii) the General Services Administration and the Defense Logistics Agency shall submit each year to the Office of Federal Procurement Policy information concerning, to the maximum extent practicable, the types and dollar value of biobased products purchased by procuring agencies.

### **(C) Procurement subject to other law**

Any procurement by any Federal agency that is subject to regulations of the Administrator under section 6962 of title 42 shall not be subject to the requirements of this section to the extent that the requirements are inconsistent with the regulations.

## **(b) Labeling**

### **(1) In general**

The Secretary, in consultation with the Administrator, shall establish a voluntary program under which the Secretary authorizes producers of biobased products to use the label "USDA Certified Biobased Product".

### **(2) Eligibility criteria**

#### **(A) Criteria**

**(i) In general**

Not later than 90 days after the date of the enactment of the Food, Conservation, and Energy Act of 2008 and except as provided in clause (ii), the Secretary, in consultation with the Administrator and representatives from small and large businesses, academia, other Federal agencies, and such other persons as the Secretary considers appropriate, shall issue criteria (as of the date of enactment of that Act) for determining which products may qualify to receive the label under paragraph (1).

**(ii) Exception**

Clause (i) shall not apply to final criteria that have been issued (as of the date of enactment of that Act) by the Secretary.

**(iii) Renewable chemicals**

Not later than 180 days after December 20, 2018, the Secretary shall update the criteria issued under clause (i) to provide criteria for determining which renewable chemicals may qualify to receive the label under paragraph (1).

**(B) Requirements**

Criteria issued under subparagraph (A) shall—

- (i) encourage the purchase of products with the maximum biobased content;
- (ii) provide that the Secretary may designate as biobased for the purposes of the voluntary program established under this subsection finished products that contain significant portions of biobased materials or components; and
- (iii) to the maximum extent practicable, be consistent with the guidelines issued under subsection (a)(3).

**(3) Use of label****(A) In general**

The Secretary shall ensure that the label referred to in paragraph (1) is used only on products that meet the criteria issued pursuant to paragraph (2).

**(B) Auditing and compliance**

The Secretary may carry out such auditing and compliance activities as the Secretary determines to be necessary to ensure compliance with subparagraph (A).

**(4) Assembled and finished products**

Not later than 1 year after February 7, 2014, the Secretary shall begin issuing criteria for determining which assembled and finished products may qualify to receive the label under paragraph (1).

**(c) Recognition**

The Secretary shall—

- (1) establish a program to recognize Federal agencies and private entities that use a substantial amount of biobased products; and
- (2) encourage Federal agencies to establish incentives programs to recognize Federal employees or contractors that make exceptional contributions to the expanded use of biobased products.

**(d) Limitation**

Nothing in this section shall apply to the procurement of motor vehicle fuels, heating oil, or electricity.

**(e) Inclusion**

Effective beginning on the date that is 90 days after the date of enactment of the Food, Conservation, and Energy Act of 2008, the Architect of the Capitol, the Sergeant at Arms of the Senate, and the Chief Administrative Officer of the House of Representatives shall consider the biobased product designations made under this section in making procurement decisions for the Capitol Complex.

**(f) Manufacturers of renewable chemicals and biobased products****(1) NAICS codes**

The Secretary and the Secretary of Commerce shall jointly develop North American Industry Classification System codes for—

- (A) renewable chemicals manufacturers; and
- (B) biobased products manufacturers.

**(2) National testing center registry**

The Secretary shall establish a national registry of testing centers for biobased products that will serve biobased product manufacturers.

**(g) Forest products laboratory coordination**

In determining whether products are eligible for the "USDA Certified Biobased Product" label, the Secretary (acting through the Forest Products Laboratory) shall provide appropriate technical and other assistance to the program and applicants for forest products.



**(h) Streamlining****(1) In general**

Not later than 1 year after December 20, 2018, the Secretary shall establish guidelines for an integrated process under which biobased products may be, in 1 expedited approval process—

- (A) determined to be eligible for a Federal procurement preference under subsection (a); and
- (B) approved to use the "USDA Certified Biobased Product" label under subsection (b).

**(2) Initiation**

The Secretary shall ensure that a review of a biobased product under the integrated qualification process established pursuant to paragraph (1) may be initiated on receipt of a recommendation or petition from a manufacturer, vendor, or other interested party.

**(3) Product designations**

The Secretary may issue a product designation pursuant to subsection (a)(3)(B), or approve the use of the "USDA Certified Biobased Product" label under subsection (b), through streamlined procedures, which shall not be subject to chapter 7 of title 5.

**(i) Requirement of procuring agencies**

A procuring agency (as defined in subsection (a)(1)) shall not establish regulations, guidance, or criteria regarding the procurement of biobased products, pursuant to this section or any other law, that impose limitations on that procurement that are more restrictive than the limitations established by the Secretary under the regulations to implement this section.

**(j) Reports****(1) In general**

Not later than 180 days after the date of enactment of the Food, Conservation, and Energy Act of 2008 and each year thereafter, the Secretary shall submit to Congress a report on the implementation of this section.

**(2) Contents**

Each report under paragraph (1) shall include—

- (A) a comprehensive management plan that establishes tasks, milestones, and timelines, organizational roles and responsibilities, and funding allocations for fully implementing this section;
- (B) information on the status of implementation of—
  - (i) item designations (including designation of intermediate ingredients and feedstocks); and
  - (ii) the voluntary labeling program established under subsection (b); and

(C) the progress made by other Federal agencies in compliance with the biobased procurement requirements, including the quantity of purchases made.

**(3) Economic impact study and report****(A) In general**

The Secretary shall conduct a study to assess the economic impact of the biobased products industry, including —

- (i) the quantity of biobased products sold;
- (ii) the value of the biobased products;
- (iii) the quantity of jobs created;
- (iv) the quantity of petroleum displaced;
- (v) other environmental benefits; and
- (vi) areas in which the use or manufacturing of biobased products could be more effectively used, including identifying any technical and economic obstacles and recommending how those obstacles can be overcome.

**(B) Report**

Not later than 1 year after February 7, 2014, the Secretary shall submit to Congress a report describing the results of the study conducted under subparagraph (A).

**(k) Funding****(1) Mandatory funding**

Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section \$3,000,000 for each of fiscal years 2014 through 2023.

**(2) Discretionary funding**

There is authorized to be appropriated to carry out this section \$3,000,000 for each of fiscal years 2019 through 2023.

**(l) Biobased product inclusion**

In this section, the term "biobased product" (as defined in section 8101 of this title) includes, with respect to forestry materials, forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging.

#### **(m) Rural development mission area**

In carrying out this section, except as provided in subsection (g), the Secretary shall act through the rural development mission area.

(Pub. L. 107–171, title IX, §9002, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1305, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2067; amended Pub. L. 112–240, title VII, §701(f)(1), Jan. 2, 2013, 126 Stat. 2364; Pub. L. 113–79, title IX, §9002(a), Feb. 7, 2014, 128 Stat. 926; Pub. L. 115–334, title IX, §9002, Dec. 20, 2018, 132 Stat. 4883.)

### **REFERENCES IN TEXT**

Subparagraph (B)(v) of subsection (a)(3) of this section, referred to in subsec. (a)(3)(C), was redesignated subparagraph (B)(vii) by Pub. L. 113–79, title IX, §9002(a)(1)(B)(i)(II), Feb. 7, 2014, 128 Stat. 927.

The date of the enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsecs. (b)(2)(A), (e), and (j)(1), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

### **CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

### **PRIOR PROVISIONS**

A prior section 8102, Pub. L. 107–171, title IX, §9002, May 13, 2002, 116 Stat. 476; Pub. L. 109–58, title II, §205, title IX, §943(a)(2), (b), Aug. 8, 2005, 119 Stat. 654, 880, 881, related to Federal procurement of biobased products, prior to the general amendment of this chapter by Pub. L. 110–246.

### **AMENDMENTS**

**2018**—Subsec. (b)(2)(A)(iii). Pub. L. 115–334, §9002(1), added cl. (iii).

Subsec. (f). Pub. L. 115–334, §9002(2), amended subsec. (f) generally. Prior to amendment, text read as follows: "The Secretary shall establish a national registry of testing centers for biobased products that will serve biobased product manufacturers."

Subsecs. (h), (i). Pub. L. 115–334, §9002(4), added subsecs. (h) and (i). Former subsecs. (h) and (i) redesignated (j) and (k), respectively.

Subsecs. (j), (k). Pub. L. 115–334, §9002(3), redesignated subsecs. (h) and (i) as (j) and (k), respectively. Former subsec. (j) redesignated (l).

Subsec. (k)(1). Pub. L. 115–334, §9002(5)(A), substituted "2023" for "2018".

Subsec. (k)(2). Pub. L. 115–334, §9002(5)(B), substituted "\$3,000,000 for each of fiscal years 2019 through 2023" for "\$2,000,000 for each of fiscal years 2014 through 2018".

Subsec. (l). Pub. L. 115–334, §9002(3), redesignated subsec. (j) as (l).

Subsec. (m). Pub. L. 115–334, §9002(6), added subsec. (m).

**2014**—Subsec. (a)(2)(A)(i)(III). Pub. L. 113–79, §9002(a)(1)(A), added subcl. (III).

Subsec. (a)(3)(B)(v). Pub. L. 113–79, §9002(a)(1)(B)(i)(III), added cl. (v). Former cl. (v) redesignated (vii).

Pub. L. 113–79, §9002(a)(1)(B)(i)(I), inserted "as determined to be necessary by the Secretary based on the availability of data," before "provide information".

Subsec. (a)(3)(B)(vi). Pub. L. 113–79, §9002(a)(1)(B)(i)(III), added cl. (vi). Former cl. (vi) redesignated (viii).

Subsec. (a)(3)(B)(vii), (viii). Pub. L. 113–79, §9002(a)(1)(B)(i)(II), redesignated cls. (v) and (vi) as (vii) and (viii), respectively.

Subsec. (a)(3)(F). Pub. L. 113–79, §9002(a)(1)(B)(ii), added subpar. (F).

Subsec. (b)(3). Pub. L. 113–79, §9002(a)(2)(A), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (b)(4). Pub. L. 113–79, §9002(a)(2)(B), added par. (4).

Subsec. (g). Pub. L. 113–79, §9002(a)(5), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (g)(2). Pub. L. 113–79, §9002(a)(3)(A)(i), substituted "Each report under paragraph (1)" for "The report" in introductory provisions.

Subsec. (g)(2)(C). Pub. L. 113–79, §9002(a)(3)(A)(ii)–(iv), added subpar. (C).

Subsec. (g)(3). Pub. L. 113–79, §9002(a)(3)(B), added par. (3).

Subsecs. (h), (i). Pub. L. 113–79, §9002(a)(4), redesignated subsecs. (g) and (h) as (h) and (i), respectively.

Subsec. (i)(1), (2). Pub. L. 113–79, §9002(a)(6), added pars. (1) and (2) and struck out former pars. (1) and (2) which related to mandatory funding for fiscal years 2008 through 2012 and discretionary funding for fiscal years 2009 through 2013, respectively.

Subsec. (j). Pub. L. 113–79, §9002(a)(7), added subsec. (j).

**2013**—Subsec. (h)(2). Pub. L. 112–240 substituted "2013" for "2012".

### **EFFECTIVE DATE OF 2013 AMENDMENT**

Amendment by Pub. L. 112–240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112–240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

### **EFFECTIVE DATE**

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of this title.

## **DRIVING INNOVATION AND CREATING JOBS IN RURAL AMERICA THROUGH BIOBASED AND SUSTAINABLE PRODUCT PROCUREMENT**

Memorandum of President of the United States, Feb. 21, 2012, 77 F.R. 10939, as amended by Ex. Ord. No. 13693, §16(b), Mar. 19, 2015, 80 F.R. 15880, provided:

Memorandum for the Heads of Executive Departments and Agencies

The BioPreferred program—established by the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) (2002 Farm Bill), and strengthened by the Food, Conservation[, and Energy Act of 2008 (Public Law 110–234 [probably should refer to Public Law 110–246]) (2008 Farm Bill)—is intended to increase Federal procurement of biobased products to promote rural economic development, create new jobs, and provide new markets for farm commodities. Biobased and sustainable products help to increase our energy security and independence.

The Federal Government, with leadership from the Department of Agriculture (USDA), has made significant strides in implementing the BioPreferred program. It is one of the key elements in my efforts to promote sustainable acquisition throughout the Government under [former] Executive Order 13514 of October 5, 2009 (Federal Leadership in Environmental, Energy, and Economic Performance). Further efforts will drive innovation and economic growth and create jobs at marginal cost to the American public.

The goal of this memorandum is to ensure that executive departments and agencies (agencies) effectively execute Federal procurement requirements for biobased products, including those requirements identified in [former] Executive Order 13514 and prescribed in the 2002 Farm Bill, as amended by the 2008 Farm Bill. It is vital that these efforts are in accord and carefully coordinated with other Federal procurement requirements.

Therefore, I direct that agencies take the following steps to significantly increase Federal procurement of biobased and other sustainable products.

SECTION 1. [Revoked by Ex. Ord. No. 13693, §16(b), Mar. 19, 2015, 80 F.R. 15880.]

SEC. 2. *Biobased Product Designations*. The USDA has already designated 64 categories of biobased products for preferred Federal procurement. Although these categories represent an estimated 9,000 individual products, less than half of the known biobased products are currently included in the preference program. Increasing the number of products subject to the Federal procurement preference will increase procurement of biobased products. Therefore, I direct the Secretary of Agriculture to:

- (a) increase both the number of categories of biobased products designated and individual products eligible for preferred purchasing by 50 percent within 1 year of the date of this memorandum; and
- (b) establish a web-based process whereby biobased product manufacturers can request USDA to establish a new product category for designation. The USDA shall determine the merit of the request and, if the product category is deemed eligible, propose designation within 180 days of the request.

SEC. 3. *Changes in Procurement Mechanisms*. Several actions can be taken to facilitate improvement in and compliance with the requirements to purchase biobased products. To achieve these changes, I direct:

- (a) the Senior Sustainability Officers and Chief Acquisition Officers of all agencies to randomly sample procurement actions (such as solicitations and awards) to verify that biobased considerations are included as appropriate. Agencies shall include results of these sampling efforts in the Sustainability/Energy scorecard reported to OMB;
- (b) the Secretary of Agriculture to work with relevant officials in agencies that have electronic product procurement catalogs to identify and implement solutions to increase the visibility of biobased and other sustainable products;

(c) the Senior Sustainability Officers of all agencies that have established agency-specific product specifications, in coordination with any other appropriate officials, to review and revise all specifications under their control to assure that, wherever possible and appropriate, such specifications require the use of sustainable products, including USDA-designated biobased products, and that any language prohibiting the use of biobased products is removed. The review shall be on a 4-year cycle. Significant review should be completed within 1 year of the date of this memorandum, and the results of the reviews shall be annually reported to OMB and the Office of Science and Technology Policy (OSTP); and

(d) the Secretary of Agriculture to amend USDA's automated contract writing system, the Integrated Acquisition System, to serve as a model for biobased product procurement throughout the Federal Government by adding elements related to acquisition planning, evaluation factors for source selection, and specifications and requirements. Once completed, USDA shall share the model with all agencies and, as appropriate, assist any agency efforts to adopt similar mechanisms.

**SEC. 4. *Small Business Assistance.*** A majority of the biobased product manufacturers and vendors selling biobased products and services that use biobased products to the Federal Government are small businesses. To improve the ability of small businesses to sell these products and services to the Federal Government, I direct:

(a) the Secretary of Commerce, in consultation with the Secretary of Agriculture, to use relevant programs of the Department, such as the Manufacturing Extension Partnership network, to improve the performance and competitiveness of biobased product manufacturers;

(b) the Secretary of Agriculture to work cooperatively with Procurement Technical Assistance Center programs located across the Nation to provide training and assistance to biobased product companies to make these companies aware of the BioPreferred program and opportunities to sell biobased products to Federal, State, and local government agencies; and

(c) the Secretary of Agriculture to develop training within 6 months of the date of this memorandum for small businesses on the BioPreferred program and the opportunities it presents, and the Administrator of the Small Business Administration (SBA) to disseminate that training to Small Business Development Centers and feature it on the SBA website.

**SEC. 5. *Reporting.*** The Federal Government should obtain the most reliable information to gauge its progress in purchasing biobased products, including measuring the annual number of procurements that include direct purchase of biobased products, the annual number of construction and service contracts that include the purchase of biobased products, and the annual volume and type of biobased products the Federal Government purchases. I direct that:

(a) within 1 year of the date of this memorandum, the Federal Acquisition Regulatory Council shall propose an amendment to the Federal Acquisition Regulation to require reporting of biobased product purchases, to be made public on an annual basis; and

(b) following the promulgation of the proposed amendment referenced in subsection (a) of this section, the Secretary of Agriculture, in consultation with the Chief Acquisition Officers Council, shall develop a reporting template to facilitate the annual reporting requirement.

**SEC. 6. *Jobs Creation Research.*** Biobased products are creating jobs across America. These innovative products are creating new markets for agriculture and expanding opportunities in rural America. Therefore, I direct the Secretary of Agriculture to prepare a report on job creation and the economic impact associated with the biobased product industry to be submitted to the President through the Domestic Policy Council and OSTP within 2 years of the date of this memorandum. The study shall include:

(a) the number of American jobs originating from the biobased product industry annually over the last 10 years, including the job changes in specific sectors;

(b) the dollar value of the current domestic biobased products industry, including intermediates, feedstocks, and finished products, but excluding biofuels;

(c) a forecast for biobased job creation potential over the next 10 years;

(d) a forecast for growth in the biobased industry over the next 10 years; and

(e) jobs data for both biofuels and biobased products, but shall generate separate data for each category.

**SEC. 7. *Education and Outreach.*** In compliance with the 2002 Farm Bill, several agencies established agency promotion programs to support the biobased products procurement preference. The Federal Acquisition Institute has added biobased procurement training to its course offerings. To assure both formal and informal educational and outreach instruction on the BioPreferred program are in place and being implemented by each agency, I direct:

(a) the Secretary of Agriculture to update all existing USDA BioPreferred and related sustainable acquisition training materials within 1 year of the date of this memorandum;

(b) the Senior Sustainability Officers and Chief Acquisition Officers of agencies to work cooperatively with the Secretary of Agriculture to immediately implement such BioPreferred program agency education

and outreach programs as are necessary to meet the requirements of this memorandum and relevant statutes; and

(c) the Secretary of Agriculture to work actively with the Committee for Purchase From People Who Are Blind or Severely Disabled to promote education and outreach to program, technical, and contracting personnel, and to purchase card holders on BioPreferred AbilityOne products.

SEC. 8. *General Provisions.* (a) This memorandum shall apply to an agency with respect to the activities, personnel, resources, and facilities of the agency that are located within the United States. The head of an agency may provide that this memorandum shall apply in whole or in part with respect to the activities, personnel, resources, and facilities of the agency that are not located within the United States, if the head of the agency determines that such application is in the interest of the United States.

(b) The head of an agency shall manage activities, personnel, resources, and facilities of the agency that are not located within the United States, and with respect to which the head of the agency has not made a determination under subsection (a) of this section, in a manner consistent with the policies set forth in this memorandum, to the extent the head of the agency determines practicable.

(c) For purposes of this memorandum, "biobased product" shall have the meaning set forth in section 8101(4) of title 7, United States Code.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) The Secretary of Agriculture is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

<sup>1</sup> See References in Text note below.

## **§8103. Biorefinery, renewable chemical, and biobased product manufacturing assistance**

### **(a) Purpose**

The purpose of this section is to assist in the development of new and emerging technologies for the development of advanced biofuels, renewable chemicals, and biobased product manufacturing so as to—

- (1) increase the energy independence of the United States;
- (2) promote resource conservation, public health, and the environment;
- (3) diversify markets for agricultural and forestry products and agriculture waste material; and
- (4) create jobs and enhance the economic development of the rural economy.

### **(b) Definitions**

In this section:

#### **(1) Biobased product manufacturing**

The term "biobased product manufacturing" means development, construction, and retrofitting of technologically new commercial-scale processing and manufacturing equipment and required facilities that will be used to convert renewable chemicals and other biobased outputs of biorefineries into end-user products on a commercial scale.

#### **(2) Eligible entity**

The term "eligible entity" means an individual, entity, Indian tribe, or unit of State or local government, including a corporation, farm cooperative, farmer cooperative organization, association of agricultural producers, National Laboratory, institution of higher education, rural electric cooperative, public power entity, or consortium of any of those entities.

#### **(3) Eligible technology**

The term "eligible technology" means, as determined by the Secretary—

(A) a technology that is being adopted in a viable commercial-scale operation of a biorefinery that produces any 1 or more, or a combination, of—

- (i) an advanced biofuel;
- (ii) a renewable chemical; or
- (iii) a biobased product; and

(B) a technology not described in subparagraph (A) that has been demonstrated to have technical and economic potential for commercial application in a biorefinery that produces any 1 or more, or a combination, of—

- (i) an advanced biofuel;
- (ii) a renewable chemical; or

(iii) a biobased product.

**(c) Assistance**

The Secretary shall make available to eligible entities guarantees for loans made to fund the development, construction, and retrofitting of commercial-scale biorefineries using eligible technology.

**(d) Loan guarantees**

**(1) Selection criteria**

**(A) In general**

In approving loan guarantee applications, the Secretary shall establish a priority scoring system that assigns priority scores to each application and only approve applications that exceed a specified minimum, as determined by the Secretary.

**(B) Feasibility**

In approving a loan guarantee application, the Secretary shall determine the technical and economic feasibility of the project based on a feasibility study of the project described in the application conducted by an independent third party.

**(C) Scoring system**

In determining the priority scoring system for loan guarantees under subsection (c), the Secretary shall consider

- (i) whether the applicant has established a market for the advanced biofuel and the byproducts produced;
- (ii) whether the area in which the applicant proposes to place the biorefinery has other similar facilities;
- (iii) whether the applicant is proposing to use a feedstock not previously used in the production of advanced biofuels;
- (iv) whether the applicant is proposing to work with producer associations or cooperatives;
- (v) the level of financial participation by the applicant, including support from non-Federal and private sources;
- (vi) whether the applicant has established that the adoption of the process proposed in the application will have a positive impact on resource conservation, public health, and the environment;
- (vii) whether the applicant can establish that if adopted, the biofuels production technology proposed in the application will not have any significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks;
- (viii) the potential for rural economic development;
- (ix) the level of local ownership proposed in the application; and
- (x) whether the project can be replicated.

**(D) Project diversity**

In approving loan guarantee applications, the Secretary shall ensure that, to the extent practicable, there is diversity in the types of projects approved for loan guarantees to ensure that as wide a range as possible of technologies, products, and approaches are assisted.

**(2) Limitations**

**(A) Maximum amount of loan guaranteed**

The principal amount of a loan guaranteed under subsection (c) may not exceed \$250,000,000.

**(B) Maximum percentage of loan guaranteed**

**(i) In general**

Except as otherwise provided in this subparagraph, a loan guaranteed under subsection (c) shall be in an amount not to exceed 80 percent of the project costs, as determined by the Secretary.

**(ii) Other direct Federal funding**

The amount of a loan guaranteed for a project under subsection (c) shall be reduced by the amount of other direct Federal funding that the eligible entity receives for the same project.

**(iii) Authority to guarantee the loan**

The Secretary may guarantee up to 90 percent of the principal and interest due on a loan guaranteed under subsection (c).

**(C) Loan guarantee fund distribution**

Of the funds made available for loan guarantees for a fiscal year under subsection (g), 50 percent of the funds shall be reserved for obligation during the second half of the fiscal year.

**(e) Consultation**

In carrying out this section, the Secretary shall consult with the Secretary of Energy.

**(f) Condition on provision of assistance**

**(1) In general**

As a condition of receiving a grant or loan guarantee under this section, an eligible entity shall ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed, in whole or in part, with the grant or loan guarantee, as the case may be, shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141 through 3144, 3146, and 3147 of title 40.

## **(2) Authority and functions**

The Secretary of Labor shall have, with respect to the labor standards described in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App) and section 3145 of title 40.

## **(g) Funding**

### **(1) Mandatory funding**

#### **(A) In general**

Subject to subparagraph (B), of the funds of the Commodity Credit Corporation, the Secretary shall use for the cost of loan guarantees under this section, to remain available until expended—

- (i) \$100,000,000 for fiscal year 2014;
- (ii) \$50,000,000 for each of fiscal years 2015 and 2016;
- (iii) \$50,000,000 for fiscal year 2019; and
- (iv) \$25,000,000 for fiscal year 2020.

#### **(B) Biobased product manufacturing**

Of the total amount of funds made available for fiscal years 2014 and 2015 under subparagraph (A), the Secretary may use for the cost of loan guarantees under this section not more than 15 percent of such funds to promote biobased product manufacturing.

### **(2) Discretionary funding**

In addition to any other funds made available to carry out this section, there is authorized to be appropriated to carry out this section \$75,000,000 for each of fiscal years 2014 through 2023.

(Pub. L. 107–171, title IX, §9003, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1310, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2072; amended Pub. L. 112–240, title VII, §701(f)(2), Jan. 2, 2013, 126 Stat. 2365; Pub. L. 113–79, title IX, §9003, Feb. 7, 2014, 128 Stat. 928; Pub. L. 115–334, title IX, §9003, Dec. 20, 2018, 132 Stat. 4884.)

## **REFERENCES IN TEXT**

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (f)(2), is set out in the Appendix to Title 5, Government Organization and Employees.

## **CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

## **PRIOR PROVISIONS**

A prior section 8103, Pub. L. 107–171, title IX, §9003, May 13, 2002, 116 Stat. 478, related to biorefinery development grants, prior to the general amendment of this chapter by Pub. L. 110–246.

## **AMENDMENTS**

**2018**—Subsec. (b)(3)(A). Pub. L. 115–334, §9003(1)(A), substituted "produces any 1 or more, or a combination, of—" and cls. (i) to (iii) for "produces an advanced biofuel; and".

Subsec. (b)(3)(B). Pub. L. 115–334, §9003(1)(B), substituted "produces any 1 or more, or a combination, of—" and cls. (i) to (iii) for "produces an advanced biofuel."

Subsec. (g)(1)(A)(iii), (iv). Pub. L. 115–334, §9003(2)(A), added cls. (iii) and (iv).

Subsec. (g)(2). Pub. L. 115–334, §9003(2)(B), substituted "2023" for "2018".

**2014**—Pub. L. 113–79, §9003(a)(1), inserted ", renewable chemical, and biobased product manufacturing" after "Biorefinery" in section catchline.

Subsec. (a). Pub. L. 113–79, §9003(a)(2), inserted "renewable chemicals, and biobased product manufacturing" after "advanced biofuels," in introductory provisions.

Subsec. (b). Pub. L. 113–79, §9003(a)(3), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Subsec. (c). Pub. L. 113–79, §9003(a)(4), substituted "to eligible entities guarantees for loans" for "to eligible entities—"

"(1) grants to assist in paying the costs of the development and construction of demonstration-scale biorefineries to demonstrate the commercial viability of 1 or more processes for converting



renewable biomass to advanced biofuels; and

"(2) guarantees for loans".

Subsec. (d). Pub. L. 113–79, §9003(a)(5), (6), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to awarding of grants under subsec. (c)(1).

Subsec. (d)(1)(C). Pub. L. 113–79, §9003(a)(7)(B), substituted "subsection (c)" for "subsection (c)(2)".

Subsec. (d)(1)(D). Pub. L. 113–79, §9003(a)(7)(A), added subpar. (D).

Subsec. (d)(2)(A), (B). Pub. L. 113–79, §9003(a)(7)(B), substituted "subsection (c)" for "subsection (c)(2)" wherever appearing.

Subsec. (d)(2)(C). Pub. L. 113–79, §9003(a)(7)(C), substituted "subsection (g)" for "subsection (h)".

Subsecs. (e) to (g). Pub. L. 113–79, §9003(a)(6), redesignated subsecs. (f) to (h) as (e) to (g), respectively.

Subsec. (g)(1). Pub. L. 113–79, §9003(b)(1), added par. (1) and struck out former par. (1) which related to mandatory funding for loan guarantees for fiscal years 2009 and 2010.

Subsec. (g)(2). Pub. L. 113–79, §9003(b)(2), substituted "\$75,000,000 for each of fiscal years 2014 through 2018" for "\$150,000,000 for each of fiscal years 2009 through 2013".

Subsec. (h). Pub. L. 113–79, §9003(a)(6), redesignated subsec. (h) as (g).

**2013**—Subsec. (h)(2). Pub. L. 112–240 substituted "2013" for "2012".

## EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112–240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

## EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of this title.

### **§8104. Repealed. Pub. L. 115–334, title IX, §9004, Dec. 20, 2018, 132 Stat. 4885**

Section, Pub. L. 107–171, title IX, §9004, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1313, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2075; amended Pub. L. 112–240, title VII, §701(f)(3), Jan. 2, 2013, 126 Stat. 2365; Pub. L. 113–79, title IX, §9004, Feb. 7, 2014, 128 Stat. 930, related to repowering assistance program.

A prior section 8104, Pub. L. 107–171, title IX, §9004, May 13, 2002, 116 Stat. 480, related to a biodiesel fuel education program, prior to the general amendment of this chapter by Pub. L. 110–246. See section 8106 of this title.

## **§8105. Bioenergy program for advanced biofuels**

### **(a) Definition of eligible producer**

In this section, the term "eligible producer" means a producer of advanced biofuels.

### **(b) Payments**

The Secretary shall make payments to eligible producers to support and ensure an expanding production of advanced biofuels.

### **(c) Contracts**

To receive a payment, an eligible producer shall—

(1) enter into a contract with the Secretary for production of advanced biofuels; and

(2) submit to the Secretary such records as the Secretary may require as evidence of the production of advanced biofuels.

### **(d) Basis for payments**

The Secretary shall make payments under this section to eligible producers based on—

(1) the quantity and duration of production by the eligible producer of an advanced biofuel;

(2) the net nonrenewable energy content of the advanced biofuel, if sufficient data is available, as determined by the Secretary; and

(3) other appropriate factors, as determined by the Secretary.

### **(e) Equitable distribution**

#### **(1) Amount**



The Secretary shall limit the amount of payments that may be received by a single eligible producer under this section in order to distribute the total amount of funding available in an equitable manner.

## **(2) Feedstock**

The total amount of payments made in a fiscal year under this section to one or more eligible producers for the production of advanced biofuels derived from a single eligible commodity, including intermediate ingredients of that single commodity or use of that single commodity and its intermediate ingredients in combination with another commodity, shall not exceed one-third of the total amount of funds made available under subsection (g).

## **(f) Other requirements**

To receive a payment under this section, an eligible producer shall meet any other requirements of Federal and State law (including regulations) applicable to the production of advanced biofuels.

## **(g) Funding**

### **(1) Mandatory funding**

Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section, to remain available until expended—

- (A) \$55,000,000 for fiscal year 2009;
- (B) \$55,000,000 for fiscal year 2010;
- (C) \$85,000,000 for fiscal year 2011;
- (D) \$105,000,000 for fiscal year 2012;
- (E) \$15,000,000 for each of fiscal years 2014 through 2018; and
- (F) \$7,000,000 for each of fiscal years 2019 through 2023.

### **(2) Discretionary funding**

In addition to any other funds made available to carry out this section, there is authorized to be appropriated to carry out this section \$20,000,000 for each of fiscal years 2019 through 2023.

### **(3) Limitation**

Of the funds provided for each fiscal year, not more than 5 percent of the funds shall be made available to eligible producers for production at facilities with a total refining capacity exceeding 150,000,000 gallons per year.

(Pub. L. 107–171, title IX, §9005, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1314, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2075; amended Pub. L. 112–240, title VII, §701(f)(4), Jan. 2, 2013, 126 Stat. 2365; Pub. L. 113–79, title IX, §9005, Feb. 7, 2014, 128 Stat. 930; Pub. L. 115–334, title IX, §9005, Dec. 20, 2018, 132 Stat. 4885.)

## **CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

## **PRIOR PROVISIONS**

A prior section 8105, Pub. L. 107–171, title IX, §9005, May 13, 2002, 116 Stat. 480, related to an energy audit and renewable energy development program, prior to the general amendment of this chapter by Pub. L. 110–246.

## **AMENDMENTS**

**2018**—Subsec. (e). Pub. L. 115–334, §9005(1), designated existing provisions as par. (1), inserted heading, substituted "The Secretary shall" for "The Secretary may" and added par. (2).

Subsec. (g)(1)(F). Pub. L. 115–334, §9005(2)(A), added subpar. (F).

Subsec. (g)(2). Pub. L. 115–334, §9005(2)(B), substituted "2019 through 2023" for "2014 through 2018".

**2014**—Subsec. (g)(1)(E). Pub. L. 113–79, §9005(1), added subpar. (E).

Subsec. (g)(2). Pub. L. 113–79, §9005(2), substituted "\$20,000,000 for each of fiscal years 2014 through 2018" for "\$25,000,000 for each of fiscal years 2009 through 2013".

**2013**—Subsec. (g)(2). Pub. L. 112–240 substituted "2013" for "2012".

## **EFFECTIVE DATE OF 2013 AMENDMENT**

Amendment by Pub. L. 112–240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112–240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

## **EFFECTIVE DATE**

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of this title.

## §8106. Biodiesel fuel education program

### (a) Establishment

The Secretary shall, under such terms and conditions as the Secretary determines to be appropriate, make competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel fuel use.

### (b) Eligible entities

To receive a grant under subsection (b), an entity shall—

- (1) be a nonprofit organization or institution of higher education;
- (2) have demonstrated knowledge of biodiesel fuel production, use, or distribution; and
- (3) have demonstrated the ability to conduct educational and technical support programs.

### (c) Consultation

In carrying out this section, the Secretary shall consult with the Secretary of Energy.

### (d) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$2,000,000 for each of fiscal years 2019 through 2023.

(Pub. L. 107–171, title IX, §9006, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1315, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2076; amended Pub. L. 112–240, title VII, §701(f)(5), Jan. 2, 2013, 126 Stat. 2365; Pub. L. 113–79, title IX, §9006, Feb. 7, 2014, 128 Stat. 930; Pub. L. 115–334, title IX, §9006, Dec. 20, 2018, 132 Stat. 4885.)

## CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

## PRIOR PROVISIONS

A prior section 8106, Pub. L. 107–171, title IX, §9006, May 13, 2002, 116 Stat. 482; Pub. L. 109–171, title I, §1301, Feb. 8, 2006, 120 Stat. 6, related to assistance to farmers, ranchers, and rural small businesses to purchase renewable energy systems and make energy efficiency improvements, prior to the general amendment of this chapter by Pub. L. 110–246. See section 8107 of this title.

## AMENDMENTS

**2018**—Subsec. (d). Pub. L. 115–334 amended subsec. (d) generally. Prior to amendment, subsec. (d) related to mandatory and discretionary funding.

**2014**—Subsec. (d)(1). Pub. L. 113–79, §9006(1), substituted "Mandatory funding" for "Fiscal years 2009 through 2012" in heading and "2018" for "2012" in text.

Subsec. (d)(2). Pub. L. 113–79, §9006(2), substituted "Discretionary funding" for "Authorization of appropriations" in heading and "each of fiscal years 2014 through 2018" for "fiscal year 2013" in text.

**2013**—Subsec. (d). Pub. L. 112–240 added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: "Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section \$1,000,000 for each of fiscal years 2008 through 2012."

## EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112–240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

## EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of this title.

## §8107. Rural Energy for America Program

### (a) Establishment

The Secretary, in consultation with the Secretary of Energy, shall establish a Rural Energy for America Program to promote energy efficiency and renewable energy development for agricultural producers and rural small businesses through—

- (1) grants for energy audits and renewable energy development assistance; and
- (2) financial assistance for energy efficiency improvements and renewable energy systems.

**(b) Energy audits and renewable energy development assistance**

**(1) In general**

The Secretary shall make competitive grants to eligible entities to provide assistance to agricultural producers and rural small businesses—

- (A) to become more energy efficient; and
- (B) to use renewable energy technologies and resources.

**(2) Eligible entities**

An eligible entity under this subsection is—

- (A) a unit of State, tribal, or local government;
- (B) a land-grant college or university or other institution of higher education;
- (C) a rural electric cooperative or public power entity;
- (D) a council (as defined in section 3451 of title 16); and
- (E) any other similar entity, as determined by the Secretary.

**(3) Selection criteria**

In reviewing applications of eligible entities to receive grants under paragraph (1), the Secretary shall consider—

- (A) the ability and expertise of the eligible entity in providing professional energy audits and renewable energy assessments;
- (B) the geographic scope of the program proposed by the eligible entity in relation to the identified need;
- (C) the number of agricultural producers and rural small businesses to be assisted by the program;
- (D) the potential of the proposed program to produce energy savings and environmental benefits;
- (E) the plan of the eligible entity for performing outreach and providing information and assistance to agricultural producers and rural small businesses on the benefits of energy efficiency and renewable energy development; and
- (F) the ability of the eligible entity to leverage other sources of funding.

**(4) Use of grant funds**

A recipient of a grant under paragraph (1) shall use the grant funds to assist agricultural producers and rural small businesses by—

- (A) conducting and promoting energy audits; and
- (B) providing recommendations and information on how—
  - (i) to improve the energy efficiency of the operations of the agricultural producers and rural small businesses; and
  - (ii) to use renewable energy technologies and resources in the operations.

**(5) Limitation**

Grant recipients may not use more than 5 percent of a grant for administrative expenses.

**(6) Cost sharing**

A recipient of a grant under paragraph (1) that conducts an energy audit for an agricultural producer or rural small business under paragraph (4) shall require that, as a condition of the energy audit, the agricultural producer or rural small business pay at least 25 percent of the cost of the energy audit, which shall be retained by the eligible entity for the cost of the energy audit.

**(c) Financial assistance for energy efficiency improvements and renewable energy systems**

**(1) In general**

**(A) Assistance**

In addition to any similar authority, the Secretary shall provide—

- (i) loan guarantees and grants to agricultural producers and rural small businesses—
  - (I) to purchase renewable energy systems, including systems that may be used to produce and sell electricity; and
  - (II) to make energy efficiency improvements; and
- (ii) loan guarantees to agricultural producers to purchase and install energy efficient equipment or systems for agricultural production or processing that exceed—
  - (I) energy efficiency building codes, if applicable;
  - (II) Federal or State energy efficiency standards, if applicable; and
  - (III) other energy efficiency standards determined appropriate by the Secretary.

**(B) Limitations**

With respect to loan guarantees under subparagraph (A)(ii)—

(i) if no codes or standards described in such subparagraph apply to the energy efficient equipment or system to be purchased or installed pursuant to such subparagraph, the Secretary shall require, to the maximum extent practicable, such equipment or system to meet the same efficiency measurements as the most efficient available equipment or system in the market; and

(ii) the Secretary shall not provide such a loan guarantee for the purchase or installation of any energy efficient equipment or system unless more than one type of such equipment or system is available in the market.

## **(2) Award considerations**

In determining the amount of a loan guarantee or grant provided under this section, the Secretary shall take into consideration, as applicable—

- (A) the type of renewable energy system to be purchased;
- (B) the estimated quantity of energy to be generated by the renewable energy system;
- (C) the expected environmental benefits of the renewable energy system;
- (D) the quantity of energy savings expected to be derived from the activity, as demonstrated by an energy audit;
- (E) the estimated period of time for the energy savings generated by the activity to equal the cost of the activity;
- (F) the expected energy efficiency of the renewable energy system; and
- (G) other appropriate factors.

## **(3) Limits**

### **(A) Grants**

The amount of a grant under this subsection shall not exceed 25 percent of the cost of the activity carried out using funds from the grant.

### **(B) Maximum amount of loan guarantees**

The amount of a loan guaranteed under this subsection shall not exceed \$25,000,000.

### **(C) Maximum amount of combined grant and loan guarantee**

The combined amount of a grant and loan guaranteed under this subsection shall not exceed 75 percent of the cost of the activity funded under this subsection.

### **(D) Loan guarantees for energy efficient equipment to agricultural producers**

Using funds made available under paragraphs (1) and (3) of subsection (f), in each fiscal year the Secretary may use for loan guarantees under paragraph (1)(A)(ii) an amount that does not exceed 15 percent of such funds.

## **(4) Tiered application process**

### **(A) In general**

In providing loan guarantees and grants under this subsection, the Secretary shall use a 3-tiered application process that reflects the size of proposed projects in accordance with this paragraph.

### **(B) Tier 1**

The Secretary shall establish a separate application process for projects for which the cost of the activity funded under this subsection is not more than \$80,000.

### **(C) Tier 2**

The Secretary shall establish a separate application process for projects for which the cost of the activity funded under this subsection is greater than \$80,000 but less than \$200,000.

### **(D) Tier 3**

The Secretary shall establish a separate application process for projects for which the cost of the activity funded under this subsection is equal to or greater than \$200,000.

### **(E) Application process**

The Secretary shall establish an application, evaluation, and oversight process that is the most simplified for tier 1 projects and more comprehensive for each subsequent tier.

## **(d) Outreach**

The Secretary shall ensure, to the maximum extent practicable, that adequate outreach relating to this section is being conducted at the State and local levels.

## **(e) Lower-cost activities**

### **(1) Limitation on use of funds**

Except as provided in paragraph (2), the Secretary shall use not less than 20 percent of the funds made available under subsection (f) to provide grants of \$20,000 or less.

### **(2) Exception**

Effective beginning on June 30 of each fiscal year, paragraph (1) shall not apply to funds made available under subsection (f) for the fiscal year.

**(f) Funding****(1) Mandatory funding**

Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section, to remain available until expended—

- (A) \$55,000,000 for fiscal year 2009;
- (B) \$60,000,000 for fiscal year 2010;
- (C) \$70,000,000 for fiscal year 2011;
- (D) \$70,000,000 for fiscal year 2012; and
- (E) \$50,000,000 for fiscal year 2014 and each fiscal year thereafter.

**(2) Audit and technical assistance funding****(A) In general**

Subject to subparagraph (B), of the funds made available for each fiscal year under paragraph (1), 4 percent shall be available to carry out subsection (b).

**(B) Other use**

Funds not obligated under subparagraph (A) by April 1 of each fiscal year to carry out subsection (b) shall become available to carry out subsection (c).

**(3) Discretionary funding**

In addition to any other funds made available to carry out this section, there is authorized to be appropriated to carry out this section \$20,000,000 for each of fiscal years 2019 through 2023.

(Pub. L. 107–171, title IX, §9007, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1315, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2077; amended Pub. L. 112–240, title VII, §701(f)(6), Jan. 2, 2013, 126 Stat. 2365; Pub. L. 113–79, title IX, §9007, Feb. 7, 2014, 128 Stat. 930; Pub. L. 115–334, title IX, §9007, Dec. 20, 2018, 132 Stat. 4886.)

**CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

**PRIOR PROVISIONS**

A prior section 8107, Pub. L. 107–171, title IX, §9007, May 13, 2002, 116 Stat. 483, related to application of hydrogen and fuel cell technologies, prior to the general amendment of this chapter by Pub. L. 110–246.

**AMENDMENTS**

**2018**—Subsec. (c)(1). Pub. L. 115–334, §9007(1)(A), amended par. (1) generally. Prior to amendment, text read as follows: "In addition to any similar authority, the Secretary shall provide loan guarantees and grants to agricultural producers and rural small businesses—

"(A) to purchase renewable energy systems, including systems that may be used to produce and sell electricity; and

"(B) to make energy efficiency improvements."

Subsec. (c)(3)(D). Pub. L. 115–334, §9007(1)(B), added subpar. (D).

Subsec. (e). Pub. L. 115–334, §9007(2), substituted "subsection (f)" for "subsection (g)" in pars. (1) and (2).

Subsec. (f). Pub. L. 115–334, §9007(3), redesignated subsec. (g) as (f) and struck out former subsec. (f). Prior to amendment, text of subsec. (f) read as follows: "Not later than 4 years after the date of enactment of the Food, Conservation, and Energy Act of 2008, the Secretary shall submit to Congress a report on the implementation of this section, including the outcomes achieved by projects funded under this section."

Subsec. (f)(3). Pub. L. 115–334, §9007(4), substituted "2019 through 2023" for "2014 through 2018".

Subsec. (g). Pub. L. 115–334, §9007(3), redesignated subsec. (g) as (f).

**2014**—Subsec. (b)(2)(D), (E). Pub. L. 113–79, §9007(a)(1), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (c)(3), (4). Pub. L. 113–79, §9007(a)(2), added par. (4), redesignated former par. (4) as (3), and struck out former par. (3) which related to grants to agricultural producers or rural small businesses to conduct feasibility studies.

Subsec. (g)(1)(E). Pub. L. 113–79, §9007(b)(1), added subpar. (E).

Subsec. (g)(3). Pub. L. 113–79, §9007(b)(2), substituted "\$20,000,000 for each of fiscal years 2014 through 2018" for "\$25,000,000 for each of fiscal years 2009 through 2013".

**2013**—Subsec. (g)(3). Pub. L. 112–240 substituted "2013" for "2012".

## **EFFECTIVE DATE OF 2013 AMENDMENT**

Amendment by Pub. L. 112–240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112–240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

## **EFFECTIVE DATE**

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of this title.

### **§8107a. Rural energy savings program**

#### **(a) Purpose**

The purpose of this section is to help rural families and small businesses achieve cost savings by providing loans to qualified consumers to implement durable cost-effective energy efficiency measures.

#### **(b) Definitions**

In this section:

##### **(1) Eligible entity**

The term "eligible entity" means—

- (A) any public power district, public utility district, or similar entity, or any electric cooperative described in section 501(c)(12) or 1381(a)(2) of title 26, that borrowed and repaid, prepaid, or is paying an electric loan made or guaranteed by the Rural Utilities Service (or any predecessor agency);
- (B) any entity primarily owned or controlled by 1 or more entities described in subparagraph (A); or
- (C) any other entity that is an eligible borrower of the Rural Utilities Service, as determined under section 1710.101 of title 7, Code of Federal Regulations (or a successor regulation).

##### **(2) Energy efficiency measures**

The term "energy efficiency measures" means, for or at property served by an eligible entity, structural improvements and investments in cost-effective, commercial technologies to increase energy efficiency (including cost-effective on- or off-grid renewable energy or energy storage systems).

##### **(3) Qualified consumer**

The term "qualified consumer" means a consumer served by an eligible entity that has the ability to repay a loan made under subsection (d), as determined by the eligible entity.

##### **(4) Secretary**

The term "Secretary" means the Secretary of Agriculture, acting through the Administrator of the Rural Utilities Service.

#### **(c) Loans to eligible entities**

##### **(1) In general**

Subject to paragraph (2), the Secretary shall make loans to eligible entities that agree to use the loan funds to make loans to qualified consumers for the purpose of implementing energy efficiency measures.

##### **(2) Requirements**

###### **(A) In general**

As a condition of receiving a loan under this subsection, an eligible entity shall—

- (i) establish a list of energy efficiency measures that is expected to decrease energy use or costs of qualified consumers;
- (ii) prepare an implementation plan for use of the loan funds, including use of any interest to be received pursuant to subsection (d)(1)(A);
- (iii) provide for appropriate measurement and verification to ensure—
  - (I) the effectiveness of the energy efficiency loans made by the eligible entity; and
  - (II) that there is no conflict of interest in carrying out this section; and

(iv) demonstrate expertise in effective use of energy efficiency measures at an appropriate scale.

###### **(B) Revision of list of energy efficiency measures**

Subject to the approval of the Secretary, an eligible entity may update the list required under subparagraph (A) (i) to account for newly available efficiency technologies.

###### **(C) Existing energy efficiency programs**

An eligible entity that, at any time before the date that is 60 days after February 7, 2014, has established an energy efficiency program for qualified consumers may use an existing list of energy efficiency measures, implementation plan, or measurement and verification system of that program to satisfy the requirements of subparagraph (A) if the Secretary determines the list, plan, or systems are consistent with the purposes of this section.

### **(3) No interest**

A loan under this subsection shall bear no interest.

### **(4) Eligibility for other loans**

The Secretary shall not include any debt incurred by a borrower under this section in the calculation of the debt-equity ratio of the borrower for purposes of eligibility for loans under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.).

### **(5) Repayment**

With respect to a loan under paragraph (1)—

(A) the term shall not exceed 20 years from the date on which the loan is closed; and

(B) except as provided in paragraph (7), the repayment of each advance shall be amortized for a period not to exceed 10 years.

### **(6) Amount of advances**

Any advance of loan funds to an eligible entity in any single year shall not exceed 50 percent of the approved loan amount.

### **(7) Special advance for start-up activities**

#### **(A) In general**

In order to assist an eligible entity in defraying the appropriate start-up costs (as determined by the Secretary) of establishing new programs or modifying existing programs to carry out subsection (d), the Secretary shall allow an eligible entity to request a special advance.

#### **(B) Amount**

No eligible entity may receive a special advance under this paragraph for an amount that is greater than 4 percent of the loan amount received by the eligible entity under paragraph (1).

#### **(C) Repayment**

Repayment of the special advance—

(i) shall be required during the 10-year period beginning on the date on which the special advance is made; and

(ii) at the election of the eligible entity, may be deferred to the end of the 10-year period.

### **(8) Limitation**

All special advances shall be made under a loan described in paragraph (1) during the first 10 years of the term of the loan.

### **(9) Accounting**

The Secretary shall take appropriate steps to streamline the accounting requirements on borrowers under this section while maintaining adequate assurances of the repayment of the loans.

## **(d) Loans to qualified consumers**

### **(1) Terms of loans**

Loans made by an eligible entity to qualified consumers using loan funds provided by the Secretary under subsection (c)—

(A) may bear interest, not to exceed 5 percent, to be used for purposes that include—

(i) to establish a loan loss reserve; and

(ii) to offset personnel and program costs of eligible entities to provide the loans;

(B) shall finance energy efficiency measures for the purpose of decreasing energy usage or costs of the qualified consumer by an amount that ensures, to the maximum extent practicable, that a loan term of not more than 10 years will not pose an undue financial burden on the qualified consumer, as determined by the eligible entity;

(C) shall not be used to fund purchases of, or modifications to, personal property unless the personal property is or becomes attached to real property (including a manufactured home) as a fixture;

(D) shall be repaid through charges added to the recurring service bill for the property for, or at which, energy efficiency measures are or will be implemented, on the condition that this requirement does not prohibit—

(i) the voluntary prepayment of a loan by the owner of the property; or

(ii) the use of any additional repayment mechanisms that are—

(I) demonstrated to have appropriate risk mitigation features, as determined by the eligible entity; or

(II) required if the qualified consumer is no longer a customer of the eligible entity; and

(E) shall require an energy audit by an eligible entity to determine the impact of proposed energy efficiency measures on the energy costs and consumption of the qualified consumer.

**(2) Contractors**

In addition to any other qualified general contractor, eligible entities may serve as general contractors.

**(e) Contract for measurement and verification, training, and technical assistance**

**(1) In general**

Not later than 90 days after February 7, 2014, the Secretary—

(A) shall establish a plan for measurement and verification, training, and technical assistance of the program; and

(B) may enter into 1 or more contracts with a qualified entity for the purposes of—

(i) providing measurement and verification activities; and

(ii) developing a program to provide technical assistance and training to the employees of eligible entities to carry out this section.

**(2) Use of subcontractors authorized**

A qualified entity that enters into a contract under paragraph (1) may use subcontractors to assist the qualified entity in carrying out the contract.

**(f) Additional authority**

The authority provided in this section is in addition to any other authority of the Secretary to offer loans under any other law.

**(g) Effective period**

Subject to the availability of funds and except as otherwise provided in this section, the loans and other expenditures required to be made under this section shall be available until expended, with the Secretary authorized to make new loans as loans are repaid.

**(h) Publication**

Not later than 120 days after the end of each fiscal year, the Secretary shall publish a description of—

(1) the number of applications received under this section for that fiscal year;

(2) the number of loans made to eligible entities under this section for that fiscal year; and

(3) the recipients of the loans described in paragraph (2).

**(i) Authorization of appropriations**

There is authorized to be appropriated to carry out this section \$75,000,000 for each of fiscal years 2014 through 2023.

(Pub. L. 107–171, title VI, §6407, as added Pub. L. 113–79, [title VI, §6205, Feb. 7, 2014](#), 128 Stat. 857; amended Pub. L. 115–334, [title VI, §6303, Dec. 20, 2018](#), 132 Stat. 4749.)

## REFERENCES IN TEXT

The Rural Electrification Act of 1936, referred to in subsec. (c)(4), is act [May 20, 1936, ch. 432](#), 49 Stat. 1363, which is classified generally to chapter 31 (§901 et seq.) of this title. For complete classification of this Act to the Code, see section 901 of this title and Tables.

## CODIFICATION

Section was not enacted as part of title IX of Pub. L. 107–171, which comprises this chapter.

## AMENDMENTS

**2018**—Subsec. (b)(2). Pub. L. 115–334, §6303(1), substituted "efficiency (including cost-effective on- or off-grid renewable energy or energy storage systems)." for "efficiency."

Subsec. (c)(4). Pub. L. 115–334, §6303(2)(B), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 115–334, §6303(2)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(5)(B). Pub. L. 115–334, §6303(2)(C), substituted "(7)" for "(6)".

Subsec. (c)(6) to (8). Pub. L. 115–334, §6303(2)(A), redesignated pars. (5) to (7) as (6) to (8), respectively.

Subsec. (c)(9). Pub. L. 115–334, §6303(2)(D), added par. (9).

Subsec. (d)(1)(A). Pub. L. 115–334, §6303(3)(A), substituted "5 percent" for "3 percent" in introductory provisions.



Subsec. (d)(1)(D). Pub. L. 115–334, §6303(3)(B), substituted "recurring service" for "electric" in introductory provisions.

Subsec. (h). Pub. L. 115–334, §6303(5), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 115–334, §6303(4), (6), redesignated subsec. (h) as (i) and substituted "2023" for "2018".

## **§8108. Biomass research and development**

### **(a) Definitions**

In this section:

#### **(1) Biobased product**

The term "biobased product" means—

- (A) an industrial product (including chemicals, materials, and polymers) produced from biomass;
- (B) a commercial or industrial product (including animal feed and electric power) derived in connection with the conversion of biomass to fuel; or
- (C) carbon dioxide that—
  - (i) is intended for permanent sequestration or utilization; and
  - (ii) is a byproduct of the production of the products described in subparagraphs (A) and (B).

#### **(2) Demonstration**

The term "demonstration" means demonstration of technology in a pilot plant or semi-works scale facility, including a plant or facility located on a farm.

#### **(3) Initiative**

The term "Initiative" means the Biomass Research and Development Initiative established under subsection (e).

### **(b) Cooperation and coordination in biomass research and development**

#### **(1) In general**

The Secretary of Agriculture and the Secretary of Energy shall coordinate policies and procedures that promote research and development regarding the production of biofuels and biobased products.

#### **(2) Points of contact**

To coordinate research and development programs and activities relating to biofuels and biobased products that are carried out by their respective departments—

- (A) the Secretary of Agriculture shall designate, as the point of contact for the Department of Agriculture, an officer of the Department of Agriculture appointed by the President to a position in the Department before the date of the designation, by and with the advice and consent of the Senate; and
- (B) the Secretary of Energy shall designate, as the point of contact for the Department of Energy, an officer of the Department of Energy appointed by the President to a position in the Department before the date of the designation, by and with the advice and consent of the Senate.

### **(c) Biomass Research and Development Board**

#### **(1) Establishment**

There is established the Biomass Research and Development Board to carry out the duties described in paragraph (3).

#### **(2) Membership**

The Board shall consist of—

- (A) the point of contacts of the Department of Energy and the Department of Agriculture, who shall serve as cochairpersons of the Board;
- (B) a senior officer of each of the Department of the Interior, the Environmental Protection Agency, the National Science Foundation, and the Office of Science and Technology Policy, each of whom shall have a rank that is equivalent to the rank of the points of contact; and
- (C) at the option of the Secretary of Agriculture and the Secretary of Energy, other members appointed by the Secretaries (after consultation with the Board).

#### **(3) Duties**

The Board shall—

- (A) coordinate research and development activities relating to biofuels and biobased products—
  - (i) between the Department of Agriculture and the Department of Energy; and
  - (ii) with other departments and agencies of the Federal Government;
- (B) provide recommendations to the points of contact concerning administration of this chapter;
- (C) ensure that—

- (i) solicitations are open and competitive with awards made annually; and
- (ii) objectives and evaluation criteria of the solicitations are clearly stated and minimally prescriptive, with no areas of special interest; and

(D) ensure that the panel of scientific and technical peers assembled under subsection (e) to review proposals is composed predominantly of independent experts selected from outside the Departments of Agriculture and Energy.

#### **(4) Funding**

Each agency represented on the Board is encouraged to provide funds for any purpose under this section.

#### **(5) Meetings**

The Board shall meet at least quarterly.

### **(d) Biomass Research and Development Technical Advisory Committee**

#### **(1) Establishment**

There is established the Biomass Research and Development Technical Advisory Committee to carry out the duties described in paragraph (3).

#### **(2) Membership**

##### **(A) In general**

The Advisory Committee shall consist of—

- (i) an individual affiliated with the biofuels industry;
- (ii) an individual affiliated with the biobased industrial and commercial products industry;
- (iii) an individual affiliated with an institution of higher education who has expertise in biofuels and biobased products;
- (iv) 2 prominent engineers or scientists from government or academia who have expertise in biofuels and biobased products;
- (v) an individual affiliated with a commodity trade association;
- (vi) 2 individuals affiliated with environmental or conservation organizations;
- (vii) an individual associated with State government who has expertise in biofuels and biobased products;
- (viii) an individual with expertise in energy and environmental analysis;
- (ix) an individual with expertise in the economics of biofuels and biobased products;
- (x) an individual with expertise in agricultural economics;
- (xi) an individual with expertise in plant biology and biomass feedstock development;
- (xii) an individual with expertise in agronomy, crop science, or soil science;
- (xiii) an individual with expertise in carbon dioxide capture, utilization, and sequestration; and
- (xiv) at the option of the points of contact, other members.

##### **(B) Appointment**

The members of the Advisory Committee shall be appointed by the points of contact.

#### **(3) Duties**

The Advisory Committee shall—

- (A) advise the points of contact with respect to the Initiative; and
- (B) evaluate and make recommendations in writing to the Board regarding whether—
  - (i) funds authorized for the Initiative are distributed and used in a manner that is consistent with the objectives, purposes, and considerations of the Initiative;
  - (ii) solicitations are open and competitive with awards made annually;
  - (iii) objectives and evaluation criteria of the solicitations are clearly stated and minimally prescriptive, with no areas of special interest;
  - (iv) the points of contact are funding proposals under this chapter that are selected on the basis of merit, as determined by an independent panel of scientific and technical peers predominantly from outside the Departments of Agriculture and Energy; and
  - (v) activities under this chapter are carried out in accordance with this chapter.

#### **(4) Coordination**

To avoid duplication of effort, the Advisory Committee shall coordinate its activities with those of other Federal advisory committees working in related areas.

#### **(5) Meetings**

The Advisory Committee shall meet at least quarterly.

#### **(6) Terms**

Members of the Advisory Committee shall be appointed for a term of 3 years.

### **(e) Biomass Research and Development Initiative**

**(1) In general**

The Secretary of Agriculture and the Secretary of Energy, acting through their respective points of contact and in consultation with the Board, shall establish and carry out a Biomass Research and Development Initiative under which competitively awarded grants, contracts, and financial assistance are provided to, or entered into with, eligible entities to carry out research on and development and demonstration of—

- (A) biofuels and biobased products; and
- (B) the methods, practices, and technologies, for the production of biofuels and biobased products.

**(2) Objectives**

The objectives of the Initiative are to develop—

- (A) technologies and processes necessary for abundant commercial production of biofuels at prices competitive with fossil fuels;
- (B) high-value biobased products—
  - (i) to enhance the economic viability of biofuels and power;
  - (ii) to serve as substitutes for petroleum-based feedstocks and products;
  - (iii) to enhance the value of coproducts produced using the technologies and processes; and
  - (iv) to permanently sequester or utilize carbon dioxide described in subsection (a)(1)(C); and
- (C) a diversity of economically and environmentally sustainable domestic sources of renewable biomass for conversion to biofuels, bioenergy, and biobased products.

**(3) Technical areas**

The Secretary of Agriculture and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency and heads of other appropriate departments and agencies (referred to in this subsection as the "Secretaries"), shall direct the Initiative in the 3 following areas:

**(A) Feedstocks development**

Research, development, and demonstration activities regarding feedstocks and feedstock logistics (including the harvest, handling, transport, preprocessing, and storage) relevant to production of raw materials for conversion to biofuels and biobased products.

**(B) Biofuels and biobased products development**

Research, development, and demonstration activities to support—

- (i) the development of diverse cost-effective technologies for the use of cellulosic biomass in the production of biofuels and biobased products;
- (ii) product diversification through technologies relevant to production of a range of biobased products (including chemicals, animal feeds, and cogenerated power) that potentially can increase the feasibility of fuel production in a biorefinery; and
- (iii) the development of technologies to permanently sequester or utilize carbon dioxide described in subsection (a)(1)(C).

**(C) Biofuels development analysis****(i) Strategic guidance**

The development of analysis that provides strategic guidance for the application of renewable biomass technologies to improve sustainability and environmental quality, cost effectiveness, security, and rural economic development.

**(ii) Energy and environmental impact**

Development of systematic evaluations of the impact of expanded biofuel production on the environment (including forest land) and on the food supply for humans and animals, including the improvement and development of tools for life cycle analysis of current and potential biofuels.

**(iii) Assessment of Federal land**

Assessments of the potential of Federal land resources to increase the production of feedstocks for biofuels and biobased products, consistent with the integrity of soil and water resources and with other environmental considerations.

**(4) Additional considerations**

Within the technical areas described in paragraph (3), the Secretaries shall support research and development—

- (A) to create continuously expanding opportunities for participants in existing biofuels production by seeking synergies and continuity with current technologies and practices;
- (B) to maximize the environmental, economic, and social benefits of production of biofuels and derived biobased products on a large scale; and
- (C) to facilitate small-scale production and local and on-farm use of biofuels, including the development of small-scale gasification technologies for production of biofuel from cellulosic feedstocks.

**(5) Eligibility**

To be eligible for a grant, contract, or assistance under this section, an applicant shall be—

- (A) an institution of higher education;
- (B) a National Laboratory;
- (C) a Federal research agency;
- (D) a State research agency;
- (E) a private sector entity;
- (F) a nonprofit organization; or
- (G) a consortium of 2 or more entities described in subparagraphs (A) through (F).

## **(6) Administration**

### **(A) In general**

After consultation with the Board, the points of contact shall—

- (i) publish annually 1 or more joint requests for proposals for grants, contracts, and assistance under this subsection;
- (ii) require that grants, contracts, and assistance under this section be awarded based on a scientific peer review by an independent panel of scientific and technical peers;
- (iii) give special consideration to applications that—
  - (I) involve a consortia of experts from multiple institutions;
  - (II) encourage the integration of disciplines and application of the best technical resources; and
  - (III) increase the geographic diversity of demonstration projects; and
- (iv) require that the technical areas described in each of subparagraphs (A), (B), and (C) of paragraph (3) receive not less than 15 percent of funds made available to carry out this section.

### **(B) Cost share**

#### **(i) Research and development projects**

##### **(I) In general**

Except as provided in subclause (II), the non-Federal share of the cost of a research or development project under this section shall be not less than 20 percent.

##### **(II) Reduction**

The Secretary of Agriculture or the Secretary of Energy, as appropriate, may reduce the non-Federal share required under subclause (I) if the appropriate Secretary determines the reduction to be necessary and appropriate.

#### **(ii) Demonstration and commercial projects**

The non-Federal share of the cost of a demonstration or commercial project under this section shall be not less than 50 percent.

### **(C) Technology and information transfer**

The Secretary of Agriculture and the Secretary of Energy shall ensure that applicable research results and technologies from the Initiative are—

- (i) adapted, made available, and disseminated, as appropriate; and
- (ii) included in the best practices database established under section 5925e(e) <sup>1</sup> of this title.

## **(f) Administrative support and funds**

### **(1) In general**

The Secretary of Energy and the Secretary of Agriculture may provide such administrative support and funds of the Department of Energy and the Department of Agriculture to the Board and the Advisory Committee as are necessary to enable the Board and the Advisory Committee to carry out their duties under this section.

### **(2) Other agencies**

The heads of the agencies referred to in subsection (c)(2)(B), and the other members of the Board appointed under subsection (c)(2)(C), are encouraged to provide administrative support and funds of their respective agencies to the Board and the Advisory Committee.

### **(3) Limitation**

Not more than 4 percent of the amount made available for each fiscal year under subsection (h) may be used to pay the administrative costs of carrying out this section.

## **(g) Reports**

For each fiscal year for which funds are made available to carry out this section, the Secretary of Energy and the Secretary of Agriculture shall jointly submit to Congress a detailed report on—

- (1) the status and progress of the Initiative, including a report from the Advisory Committee on whether funds appropriated for the Initiative have been distributed and used in a manner that is consistent with the objectives and

requirements of this section;

(2) the general status of cooperation and research and development efforts carried out at each agency with respect to biofuels and biobased products; and

(3) the plans of the Secretary of Energy and the Secretary of Agriculture for addressing concerns raised in the report, including concerns raised by the Advisory Committee.

#### **(h) Funding**

##### **(1) Mandatory funding**

Of the funds of the Commodity Credit Corporation, the Secretary of Agriculture shall use to carry out this section, to remain available until expended—

- (A) \$20,000,000 for fiscal year 2009;
- (B) \$28,000,000 for fiscal year 2010;
- (C) \$30,000,000 for fiscal year 2011;
- (D) \$40,000,000 for fiscal year 2012; and
- (E) \$3,000,000 for each of fiscal years 2014 through 2017.

##### **(2) Discretionary funding**

In addition to any other funds made available to carry out this section, there is authorized to be appropriated to carry out this section \$20,000,000 for each of fiscal years 2014 through 2023.

(Pub. L. 107–171, title IX, §9008, as added Pub. L. 110–234, [title IX, §9001\(a\), May 22, 2008](#), 122 Stat. 1318, and Pub. L. 110–246, [§4\(a\), title IX, §9001\(a\), June 18, 2008](#), 122 Stat. 1664, 2079; amended Pub. L. 112–240, [title VII, §701\(f\)\(7\), Jan. 2, 2013](#), 126 Stat. 2365; Pub. L. 113–79, [title IX, §9008, Feb. 7, 2014](#), 128 Stat. 931; Pub. L. 115–334, [title VII, §7507, Dec. 20, 2018](#), 132 Stat. 4823.)

### **REFERENCES IN TEXT**

Section 5925e of this title, referred to in subsec. (e)(6)(C)(ii), was repealed by Pub. L. 113–79, [title VII, §7212\(a\), Feb. 7, 2014](#), 128 Stat. 886.

### **CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

### **PRIOR PROVISIONS**

A prior section 8108, Pub. L. 107–171, [title IX, §9010, May 13, 2002](#), 116 Stat. 485, related to continuation of bioenergy program, prior to the general amendment of this chapter by Pub. L. 110–246. See section 8105 of this title.

A prior section 9008 of Pub. L. 107–171 amended title III of Pub. L. 106–224, which was classified to chapter 112 (§8601 et seq.) of this title prior to repeal by Pub. L. 110–246, §9001(b).

### **AMENDMENTS**

**2018**—Subsec. (a)(1)(C). Pub. L. 115–334, §7507(1), added subpar. (C).

Subsec. (d)(2)(A)(xiii), (xiv). Pub. L. 115–334, §7507(2), added cl. (xiii) and redesignated former cl. (xiii) as (xiv).

Subsec. (e)(2)(B)(iv). Pub. L. 115–334, §7507(3)(A), added cl. (iv).

Subsec. (e)(3)(B)(iii). Pub. L. 115–334, §7507(3)(B), added cl. (iii).

Subsec. (h)(2). Pub. L. 115–334, §7507(4), substituted "2023" for "2018".

**2014**—Subsec. (h)(1)(E). Pub. L. 113–79, §9008(1), added subpar. (E).

Subsec. (h)(2). Pub. L. 113–79, §9008(2), substituted "\$20,000,000 for each of fiscal years 2014 through 2018" for "\$35,000,000 for each of fiscal years 2009 through 2013".

**2013**—Subsec. (h)(2). Pub. L. 112–240 substituted "2013" for "2012".

### **EFFECTIVE DATE OF 2013 AMENDMENT**

Amendment by Pub. L. 112–240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112–240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

### **EFFECTIVE DATE**

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of this title.

<sup>1</sup> See References in Text note below.

## **§8109. Repealed. Pub. L. 115–334, title IX, §9008, Dec. 20, 2018, 132 Stat. 4886**

Section, Pub. L. 107–171, title IX, §9009, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1324, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2085; amended Pub. L. 112–240, title VII, §701(f)(8), Jan. 2, 2013, 126 Stat. 2365, established the Rural Energy Self-Sufficiency Initiative.

A prior section 8109, Pub. L. 107–171, title IX, §9011, as added Pub. L. 108–199, div. A, title VII, §778(b), Jan. 23, 2004, 118 Stat. 41, related to research, extension, and educational programs on biobased energy technologies and products, prior to the general amendment of this chapter by Pub. L. 110–246. See section 8114 of this title.

## **§8110. Feedstock flexibility program for bioenergy producers**

### **(a) Definitions**

In this section:

#### **(1) Bioenergy**

The term "bioenergy" means fuel grade ethanol and other biofuel.

#### **(2) Bioenergy producer**

The term "bioenergy producer" means a producer of bioenergy that uses an eligible commodity to produce bioenergy under this section.

#### **(3) Eligible commodity**

The term "eligible commodity" means a form of raw or refined sugar or in-process sugar that is eligible to be marketed in the United States for human consumption or to be used for the extraction of sugar for human consumption.

#### **(4) Eligible entity**

The term "eligible entity" means an entity located in the United States that markets an eligible commodity in the United States.

### **(b) Feedstock flexibility program**

#### **(1) In general**

##### **(A) Purchases and sales**

For each of the 2008 through 2023 crops, the Secretary shall purchase eligible commodities from eligible entities and sell such commodities to bioenergy producers for the purpose of producing bioenergy in a manner that ensures that section 7272 of this title is operated at no cost to the Federal Government by avoiding forfeitures to the Commodity Credit Corporation.

##### **(B) Competitive procedures**

In carrying out the purchases and sales required under subparagraph (A), the Secretary shall, to the maximum extent practicable, use competitive procedures, including the receiving, offering, and accepting of bids, when entering into contracts with eligible entities and bioenergy producers, provided that such procedures are consistent with the purposes of subparagraph (A).

##### **(C) Limitation**

The purchase and sale of eligible commodities under subparagraph (A) shall only be made in crop years in which such purchases and sales are necessary to ensure that the program authorized under section 7272 of this title is operated at no cost to the Federal Government by avoiding forfeitures to the Commodity Credit Corporation.

#### **(2) Notice**

##### **(A) In general**

As soon as practicable after the date of enactment of the Food, Conservation, and Energy Act of 2008 and each September 1 thereafter through September 1, 2023, the Secretary shall provide notice to eligible entities and bioenergy producers of the quantity of eligible commodities that shall be made available for purchase and sale for the crop year following the date of the notice under this section.

##### **(B) Reestimates**

Not later than the January 1, April 1, and July 1 of the calendar year following the date of a notice under subparagraph (A), the Secretary shall reestimate the quantity of eligible commodities determined under subparagraph (A), and provide notice and make purchases and sales based on such reestimates.

#### **(3) Commodity Credit Corporation inventory**

**(A) Dispositions****(i) Bioenergy and generally**

Except as provided in clause (ii), to the extent that an eligible commodity is owned and held in inventory by the Commodity Credit Corporation (accumulated pursuant to the program authorized under section 7272 of this title), the Secretary shall—

- (I) sell the eligible commodity to bioenergy producers under this section consistent with paragraph (1)(C);
- (II) dispose of the eligible commodity in accordance with section 7272(f)(2) of this title; or
- (III) otherwise dispose of the eligible commodity through the buyback of certificates of quota entry.

**(ii) Preservation of other authorities**

Nothing in this section limits the use of other authorities for the disposition of an eligible commodity held in the inventory of the Commodity Credit Corporation for nonfood use or otherwise in a manner that does not increase the net quantity of sugar available for human consumption in the United States market, consistent with section 7272(f)(1) of this title.

**(B) Emergency shortages**

Notwithstanding subparagraph (A), if there is an emergency shortage of sugar for human consumption in the United States market that is caused by a war, flood, hurricane, or other natural disaster, or other similar event, the Secretary may dispose of an eligible commodity that is owned and held in inventory by the Commodity Credit Corporation (accumulated pursuant to the program authorized under section 7272 of this title) through disposition as authorized under section 7272(f) of this title or through the use of any other authority of the Commodity Credit Corporation.

**(4) Transfer rule; storage fees****(A) General transfer rule**

Except with regard to emergency dispositions under paragraph (3)(B) and as provided in subparagraph (C), the Secretary shall ensure that bioenergy producers that purchase eligible commodities pursuant to this section take possession of the eligible commodities within 30 calendar days of the date of such purchase from the Commodity Credit Corporation.

**(B) Payment of storage fees prohibited****(i) In general**

The Secretary shall, to the maximum extent practicable, carry out this section in a manner that ensures no storage fees are paid by the Commodity Credit Corporation in the administration of this section.

**(ii) Exception**

Clause (i) shall not apply with respect to any commodities owned and held in inventory by the Commodity Credit Corporation (accumulated pursuant to the program authorized under section 7272 of this title).

**(C) Option to prevent storage fees****(i) In general**

The Secretary may enter into contracts with bioenergy producers to sell eligible commodities to such producers prior in time to entering into contracts with eligible entities to purchase the eligible commodities to be used to satisfy the contracts entered into with the bioenergy producers.

**(ii) Special transfer rule**

If the Secretary makes a sale and purchase referred to in clause (i), the Secretary shall ensure that the bioenergy producer that purchased eligible commodities takes possession of such commodities within 30 calendar days of the date the Commodity Credit Corporation purchases the eligible commodities.

**(5) Relation to other laws**

If sugar that is subject to a marketing allotment under part VII of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359aa et seq.) is the subject of a payment under this section, the sugar shall be considered marketed and shall count against a processor's allocation of an allotment under such part, as applicable.

**(6) Funding**

The Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation, including the use of such sums as are necessary, to carry out this section.

(Pub. L. 107–171, title IX, §9010, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1325, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2086; amended Pub. L. 112–240, title VII, §701(f)(9), Jan. 2, 2013, 126 Stat. 2365; Pub. L. 113–79, title IX, §9009, Feb. 7, 2014, 128 Stat. 931; Pub. L. 115–334, title IX, §9009, Dec. 20, 2018, 132 Stat. 4887.)

**REFERENCES IN TEXT**

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (b)(2)(A), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

The Agricultural Adjustment Act of 1938, referred to in subsec. (b)(5), is act [Feb. 16, 1938, ch. 30](#), 52 Stat. 31. Part VII of subtitle B of title III of the Act is classified to subpart VII (§1359aa et seq.) of part B of subchapter II of chapter 35 of this title. For complete classification of this Act to the Code, see section 1281 of this title and Tables.

## **CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

## **PRIOR PROVISIONS**

A prior section 9010 of Pub. L. 107–171 was classified to section 8108 of this title, prior to the general amendment of this chapter by Pub. L. 110–246.

## **AMENDMENTS**

**2018**—Subsec. (b)(1)(A), (2)(A). Pub. L. 115–334 substituted "2023" for "2018".

**2014**—Subsec. (b)(1)(A), (2)(A). Pub. L. 113–79 substituted "2018" for "2013".

**2013**—Subsec. (b)(1)(A), (2)(A). Pub. L. 112–240 substituted "2013" for "2012".

## **EFFECTIVE DATE OF 2013 AMENDMENT**

Amendment by Pub. L. 112–240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112–240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

## **EFFECTIVE DATE**

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of this title.

## **§8111. Biomass Crop Assistance Program**

### **(a) Definitions**

In this section:

#### **(1) BCAP**

The term "BCAP" means the Biomass Crop Assistance Program established under this section.

#### **(2) BCAP project area**

The term "BCAP project area" means an area that—

(A) has specified boundaries that are submitted to the Secretary by the project sponsor and subsequently approved by the Secretary;

(B) includes producers with contract acreage that will supply a portion of the renewable biomass needed by a biomass conversion facility; and

(C) is physically located within an economically practicable distance from the biomass conversion facility.

#### **(3) Contract acreage**

The term "contract acreage" means eligible land that is covered by a BCAP contract entered into with the Secretary.

#### **(4) Eligible crop**

##### **(A) In general**

The term "eligible crop" means a crop of renewable biomass.

##### **(B) Exclusions**

The term "eligible crop" does not include—

(i) any crop that is eligible to receive payments under title I of the Agricultural Act of 2014 [7 U.S.C. 9001 et seq.] or an amendment made by that title; or

(ii) any plant that is invasive or noxious or species or varieties of plants that credible risk assessment tools or other credible sources determine are potentially invasive, as determined by the Secretary in consultation with other appropriate Federal or State departments and agencies.

#### **(5) Eligible land**



**(A) In general**

The term "eligible land" includes—

- (i) agricultural and nonindustrial private forest lands (as defined in section 2103a(c) of title 16); and
- (ii) land enrolled in the conservation reserve program established under subchapter B of chapter I of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.), or the Agricultural Conservation Easement Program established under subtitle H of title XII of that Act [16 U.S.C. 3865 et seq.], under a contract that will expire at the end of the current fiscal year.

**(B) Exclusions**

The term "eligible land" does not include—

- (i) Federal- or State-owned land;
- (ii) land that is native sod, as of the date of enactment of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8701 et seq.);
- (iii) land enrolled in the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.), other than land described in subparagraph (A)(ii); or
- (iv) land enrolled in the Agricultural Conservation Easement Program established under subtitle H of title XII of that Act [16 U.S.C. 3865 et seq.], other than land described in subparagraph (A)(ii).

**(6) Eligible material****(A) In general**

The term "eligible material" means renewable biomass harvested directly from the land, including crop residue from any crop that is eligible to receive payments under title I of the Agricultural Act of 2014 [7 U.S.C. 9001 et seq.] or an amendment made by that title.

**(B) Inclusions**

The term "eligible material" shall only include—

- (i) eligible material that is collected or harvested by the eligible material owner—
  - (I) directly from—
    - (aa) National Forest System;
    - (bb) Bureau of Land Management land;
    - (cc) non-Federal land; or
    - (dd) land owned by an individual Indian or Indian tribe that is held in trust by the United States for the benefit of the individual Indian or Indian tribe or subject to a restriction against alienation imposed by the United States;
  - (II) in a manner that is consistent with—
    - (aa) a conservation plan;
    - (bb) a forest stewardship plan; or
    - (cc) a plan that the Secretary determines is equivalent to a plan described in item (aa) or (bb) and consistent with Executive Order 13112 (42 U.S.C. 4321 note; relating to invasive species);
- (ii) if woody eligible material, woody eligible material that is produced on land other than contract acreage that —
  - (I) is a byproduct of a preventative treatment that is removed to reduce hazardous fuel or to reduce or contain disease or insect infestation; and
  - (II) if harvested from Federal land, is harvested in accordance with section 6512(e) of title 16;
- (iii) eligible material that is delivered to a qualified biomass conversion facility to be used for heat, power, biobased products, research, or advanced biofuels; and
- (iv) algae.

**(C) Exclusions**

The term "eligible material" does not include—

- (i) material that is whole grain from any crop that is eligible to receive payments under title I of the Agricultural Act of 2014 [7 U.S.C. 9001 et seq.] or an amendment made by that title, including—
  - (I) barley, corn, grain sorghum, oats, rice, or wheat;
  - (II) honey;
  - (III) mohair;
  - (IV) oilseeds, including canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seed;
  - (V) peanuts;
  - (VI) pulse;
  - (VII) chickpeas, lentils, and dry peas;
  - (VIII) dairy products;

- (IX) sugar; and
- (X) wool and cotton boll fiber;

- (ii) animal waste and byproducts, including fat, oil, grease, and manure;
- (iii) food waste and yard waste;
- (iv) woody eligible material that—
  - (I) is removed outside contract acreage; and
  - (II) is not a byproduct of a preventative treatment to reduce hazardous fuel or to reduce or contain disease or insect infestation;
- (v) any woody eligible material collected or harvested outside contract acreage that would otherwise be used for existing market products; or
- (vi) bagasse.

**(7) Producer**

The term "producer" means an owner or operator of contract acreage that is physically located within a BCAP project area.

**(8) Project sponsor**

The term "project sponsor" means—

- (A) a group of producers; or
- (B) a biomass conversion facility.

**(9) Socially disadvantaged farmer or rancher**

The term "socially disadvantaged farmer or rancher" has the meaning given the term in section 2279(e) <sup>1</sup> of this title.

**(b) Establishment and purpose**

The Secretary shall establish and administer a Biomass Crop Assistance Program to—

- (1) support the establishment and production of eligible crops for conversion to bioenergy in selected BCAP project areas; and
- (2) assist agricultural and forest land owners and operators with the collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility.

**(c) BCAP project area**

**(1) In general**

The Secretary shall provide financial assistance to a producer of an eligible crop in a BCAP project area.

**(2) Selection of project areas**

**(A) In general**

To be considered for selection as a BCAP project area, a project sponsor shall submit to the Secretary a proposal that, at a minimum, includes—

- (i) a description of the eligible land and eligible crops of each producer that will participate in the proposed BCAP project area;
- (ii) a letter of commitment from a biomass conversion facility that the facility will use the eligible crops intended to be produced in the proposed BCAP project area;
- (iii) evidence that the biomass conversion facility has sufficient equity available, as determined by the Secretary, if the biomass conversion facility is not operational at the time the proposal is submitted to the Secretary; and
- (iv) any other information about the biomass conversion facility or proposed biomass conversion facility that the Secretary determines necessary for the Secretary to be reasonably assured that the plant will be in operation by the date on which the eligible crops are ready for harvest.

**(B) BCAP project area selection criteria**

In selecting BCAP project areas, the Secretary shall consider—

- (i) the volume of the eligible crops proposed to be produced in the proposed BCAP project area and the probability that those crops will be used for the purposes of the BCAP;
- (ii) the volume of renewable biomass projected to be available from sources other than the eligible crops grown on contract acres;
- (iii) the anticipated economic impact in the proposed BCAP project area;
- (iv) the opportunity for producers and local investors to participate in the ownership of the biomass conversion facility in the proposed BCAP project area;
- (v) the participation rate by—
  - (I) beginning farmers or ranchers (as defined in accordance with section 1991(a) of this title); or
  - (II) socially disadvantaged farmers or ranchers;

- (vi) the impact on soil, water, and related resources;
- (vii) the variety in biomass production approaches within a project area, including (as appropriate)—
  - (I) agronomic conditions;
  - (II) harvest and postharvest practices; and
  - (III) monoculture and polyculture crop mixes;

- (viii) the range of eligible crops among project areas;
- (ix) existing project areas that have received funding under this section and the continuation of funding of such project areas to advance the maturity of such project areas; and
- (x) any additional information that the Secretary determines to be necessary.

### **(3) Contract**

#### **(A) In general**

On approval of a BCAP project area by the Secretary, each producer in the BCAP project area shall enter into a contract directly with the Secretary.

#### **(B) Minimum terms**

At a minimum, a contract under this subsection shall include terms that cover—

- (i) an agreement to make available to the Secretary, or to an institution of higher education or other entity designated by the Secretary, such information as the Secretary considers to be appropriate to promote the production of eligible crops and the development of biomass conversion technology;
- (ii) compliance with the highly erodible land conservation requirements of subtitle B of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 et seq.) and the wetland conservation requirements of subtitle C of title XII of that Act (16 U.S.C. 3821 et seq.);
- (iii) the implementation of (as determined by the Secretary)—
  - (I) a conservation plan;
  - (II) a forest stewardship plan; or
  - (III) a plan that is equivalent to a conservation or forest stewardship plan; and

- (iv) any additional requirements that Secretary <sup>2</sup> determines to be necessary.

#### **(C) Duration**

A contract under this subsection shall have a term of not more than—

- (i) 5 years for annual and perennial crops; or
- (ii) 15 years for woody biomass.

### **(4) Relationship to other programs**

In carrying out this subsection, the Secretary shall provide for the preservation of cropland base and yield history applicable to the land enrolled in a BCAP contract.

### **(5) Payments**

#### **(A) In general**

The Secretary shall make establishment and annual payments directly to producers to support the establishment and production of eligible crops on contract acreage.

#### **(B) Amount of establishment payments**

##### **(i) In general**

Subject to clause (ii), the amount of an establishment payment under this subsection shall be not more than 50 percent of the costs of establishing an eligible perennial crop covered by the contract but not to exceed \$500 per acre, including—

- (I) the cost of seeds and stock for perennials;
- (II) the cost of planting the perennial crop, as determined by the Secretary; and
- (III) in the case of nonindustrial private forestland, the costs of site preparation and tree planting.

##### **(ii) Socially disadvantaged farmers or ranchers**

In the case of socially disadvantaged farmers or ranchers, the costs of establishment may not exceed \$750 per acre.

#### **(C) Amount of annual payments**

##### **(i) In general**

Subject to clause (ii), the amount of an annual payment under this subsection shall be determined by the Secretary.

##### **(ii) Reduction**

The Secretary shall reduce an annual payment by an amount determined to be appropriate by the Secretary, if—

- (I) an eligible crop is used for purposes other than the production of energy at the biomass conversion facility;
- (II) an eligible crop is delivered to the biomass conversion facility;
- (III) the producer receives a payment under subsection (d);
- (IV) the producer violates a term of the contract; or
- (V) the Secretary determines a reduction is necessary to carry out this section.

**(D) Exclusion**

The Secretary shall not make any BCAP payments on land for which payments are received under the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) or the agricultural conservation easement program established under subtitle H of title XII of that Act [16 U.S.C. 3865 et seq.].

**(d) Assistance with collection, harvest, storage, and transportation**

**(1) In general**

The Secretary shall make a payment for the delivery of eligible material to a biomass conversion facility to—

- (A) a producer of an eligible crop that is produced on BCAP contract acreage; or
- (B) a person with the right to collect or harvest eligible material, regardless of whether the eligible material is produced on contract acreage.

**(2) Payments**

**(A) Costs covered**

A payment under this subsection shall be in an amount described in subparagraph (B) for—

- (i) collection;
- (ii) harvest;
- (iii) storage; and
- (iv) transportation to a biomass conversion facility.

**(B) Amount**

Subject to paragraph (3), the Secretary may provide matching payments at a rate of up to \$1 for each \$1 per ton provided by the biomass conversion facility, in an amount not to exceed \$20 per dry ton for a period of 2 years.

**(3) Limitation on assistance for BCAP contract acreage**

As a condition of the receipt of an annual payment under subsection (c), a producer receiving a payment under this subsection for collection, harvest, storage, or transportation of an eligible crop produced on BCAP acreage shall agree to a reduction in the annual payment.

**(e) Report**

Not later than 4 years after February 7, 2014, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the dissemination by the Secretary of the best practice data and information gathered from participants receiving assistance under this section.

**(f) Funding**

**(1) Authorization of appropriations**

There is authorized to be appropriated to carry out this section \$25,000,000 for each of fiscal years 2019 through 2023.

**(2) Collection, harvest, storage, and transportation payments**

Of the amount made available under paragraph (1) for each fiscal year, the Secretary shall use not less than 10 percent, nor more than 50 percent, of the amount to make collection, harvest, transportation, and storage payments under subsection (d)(2).

**(3) Technical assistance**

Effective for fiscal year 2014 and each subsequent fiscal year, funds made available under this subsection shall be available for the provision of technical assistance with respect to activities authorized under this section.

(Pub. L. 107–171, title IX, §9011, as added Pub. L. 110–234, [title IX, §9001\(a\)](#), [May 22, 2008](#), 122 Stat. 1327, and Pub. L. 110–246, [§4\(a\)](#), [title IX, §9001\(a\)](#), [June 18, 2008](#), 122 Stat. 1664, 2089; amended Pub. L. 112–240, [title VII, §701\(f\)](#) (10), [Jan. 2, 2013](#), 126 Stat. 2365; Pub. L. 113–79, [title IX, §9010](#), [Feb. 7, 2014](#), 128 Stat. 932; Pub. L. 115–334, [title IX, §9010](#), [Dec. 20, 2018](#), 132 Stat. 4887.)

## REFERENCES IN TEXT

The Agricultural Act of 2014, referred to in subsec. (a)(4)(B)(i), (6)(A), and (C)(i), is Pub. L. 113–79, [Feb. 7, 2014](#), 128 Stat. 649. Title I of the Act is classified principally to chapter 115 (§9001 et seq.) of this title. For

complete classification of this Act to the Code, see Short Title note set out under section 9001 of this title and Tables.

The Food Security Act of 1985, referred to in subsecs. (a)(5)(A)(ii), (B)(iii), (iv), and (c)(3)(B)(ii), (5)(D), is Pub. L. 99–198, [Dec. 23, 1985](#), 99 Stat. 1354. Subtitles B, C, and H of title XII of the Act are classified generally to subchapters II (§3811 et seq.), III (§3821 et seq.), and VII (§3865 et seq.), respectively, of chapter 58 of Title 16, Conservation. Subchapter B of chapter 1 of subtitle D of title XII of the Act is classified generally to subpart B (§3831 et seq.) of part I of subchapter IV of chapter 58 of Title 16. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of this title and Tables.

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsecs. (a)(5)(B)(ii), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

Section 2279(e) of this title, referred to in subsec. (a)(9), was redesignated section 2279(a) of this title by section 12301(b)(3) of Pub. L. 115–334.

## CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

## PRIOR PROVISIONS

A prior section 9011 of Pub. L. 107–171 was classified to section 8109 of this title, prior to the general amendment of this chapter by Pub. L. 110–246.

## AMENDMENTS

**2018**—Subsec. (a)(6)(B)(iv). Pub. L. 115–334, §9010(1)(A), added cl. (iv).

Subsec. (a)(6)(C)(iv) to (vii). Pub. L. 115–334, §9010(1)(B), redesignated cls. (v) to (vii) as (iv) to (vi), respectively, and struck out former cl. (iv) which read as follows: "algae;"

Subsec. (f)(1). Pub. L. 115–334, §9010(2)(A), amended par. (1) generally. Prior to amendment, text read as follows: "Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section \$25,000,000 for each of fiscal years 2014 through 2018."

Subsec. (f)(3). Pub. L. 115–334, §9010(2)(B), amended par. (3) generally. Prior to amendment, par. (3) related to funds for technical assistance.

**2014**—Pub. L. 113–79 amended section generally. Prior to amendment, section related to the Biomass Crop Assistance Program.

**2013**—Subsec. (f). Pub. L. 112–240 designated existing provisions as par. (1), inserted heading, and added par (2).

## EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112–240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

## EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of this title.

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be preceded by "the".

### **§8112. Repealed.** Pub. L. 113–79, [title IX, §9011, Feb. 7, 2014](#), 128 Stat. 938

Section, Pub. L. 107–171, [title IX, §9012](#), as added Pub. L. 110–234, [title IX, §9001\(a\), May 22, 2008](#), 122 Stat. 1331, and Pub. L. 110–246, [§4\(a\), title IX, §9001\(a\), June 18, 2008](#), 122 Stat. 1664, 2093; amended Pub. L. 112–240, [title VII, §701\(f\)\(11\), Jan. 2, 2013](#), 126 Stat. 2366, related to a competitive research and development program to encourage use of forest biomass for energy.

### **§8113. Community Wood Energy and Wood Innovation Program**

**(a) Definitions**

In this section:

**(1) Community wood energy system****(A) In general**

The term "community wood energy system" means an energy system that—

- (i) produces thermal energy or combined thermal energy and electricity where thermal is the primary energy output;
- (ii) services public facilities owned or operated by State or local governments (including schools, town halls, libraries, and other public buildings) or private or nonprofit facilities (including commercial and business facilities, such as hospitals, office buildings, apartment buildings, and manufacturing and industrial buildings); and
- (iii) uses woody biomass, including residuals—
  - (I) that have not been adulterated with glue or other chemical treatments from wood processing facilities, as the primary fuel; and
  - (II) for which the use of that biomass for energy production does not cause conversion of forests to nonforest use.

**(B) Inclusions**

The term "community wood energy system" includes single-facility central heating, district heating systems serving multiple buildings, combined heat and electric systems where thermal energy is the primary energy output, and other related biomass energy systems.

**(2) Innovative wood product facility**

The term "innovative wood product facility" means a manufacturing or processing plant or mill that produces—

- (A) building components or systems that use large panelized wood construction, including mass timber;
- (B) wood products derived from nanotechnology or other new technology processes, as determined by the Secretary; or
- (C) other innovative wood products that use low-value, low-quality wood, as determined by the Secretary.

**(3) Mass timber**

The term "mass timber" includes—

- (A) cross-laminated timber;
- (B) nail-laminated timber;
- (C) glue-laminated timber;
- (D) laminated strand lumber; and
- (E) laminated veneer lumber.

**(4) Program**

The term "Program" means the Community Wood Energy and Wood Innovation Program established under subsection (b).

**(b) Competitive grant program**

The Secretary, acting through the Chief of the Forest Service, shall establish a competitive grant program to be known as the "Community Wood Energy and Wood Innovation Program".

**(c) Matching grants****(1) In general**

Under the Program, the Secretary shall make grants to cover not more than 35 percent of the capital cost for installing a community wood energy system or building an innovative wood product facility.

**(2) Special circumstances**

The Secretary may establish special circumstances, such as in the case of a community wood energy system project or innovative wood product facility project involving a school or hospital in a low-income community, under which grants under the Program may cover up to 50 percent of the capital cost.

**(3) Source of matching funds**

Matching funds required pursuant to this subsection from a grant recipient shall be derived from non-Federal funds.

**(d) Project cap**

The total amount of grants under the Program for a community wood energy system project or innovative wood product facility project may not exceed—

- (1) in the case of grants under the general authority provided under subsection (c)(1), \$1,000,000; and
- (2) in the case of grants for which the special circumstances apply under subsection (c)(2), \$1,500,000.

**(e) Selection criteria**

In selecting applicants for grants under the Program, the Secretary shall consider the following:

- (1) The energy efficiency of the proposed community wood energy system or innovative wood product facility.
- (2) The cost effectiveness of the proposed community wood energy system or innovative wood product facility.
- (3) The extent to which the proposed community wood energy system or innovative wood product facility represents the best available commercial technology.
- (4) The extent to which the proposed community wood energy system uses the most stringent control technology that has been required or achieved in practice for a wood-fired boiler of similar size and type.
- (5)(A) The extent to which the proposed community wood energy system will displace conventional fossil fuel generation.
- (B) Whether the proposed community wood energy system minimizes emission increases to the greatest extent possible.
- (6) The extent to which the proposed community wood energy system will increase delivered thermal efficiency of the systems replaced.
- (7) The extent to which the applicant has demonstrated a high likelihood of project success by completing detailed engineering and design work in advance of the grant application.
- (8) Other technical, economic, conservation, and environmental criteria that the Secretary considers appropriate.

#### **(f) Grant priorities**

In selecting applicants for grants under the Program, the Secretary shall give priority to proposals that use the most stringent control technology that has been required or achieved in practice for a wood-fired boiler and—

- (1) would be carried out in a location where markets are needed for the low-value, low-quality wood;
- (2) would be carried out in a location with limited access to natural gas pipelines;
- (3) would include the use or retrofitting (or both) of existing sawmill facilities located in a location where the average annual unemployment rate exceeded the national average unemployment rate by more than 1 percent during the previous calendar year; or
- (4) would be carried out in a location where the project will aid with forest restoration.

#### **(g) Limitations**

##### **(1) Capacity of community wood energy systems**

A community wood energy system acquired with grant funds under the Program shall not exceed nameplate capacity of 5 megawatts of thermal energy or combined thermal and electric energy.

##### **(2) Funding for innovative wood product facilities**

Not more than 25 percent of funds provided as grants under the Program for a fiscal year may go to applicants proposing innovative wood product facilities, unless the Secretary has received an insufficient number of qualified proposals for community wood energy systems.

#### **(h) Funding**

There is authorized to be appropriated to carry out the Program \$25,000,000 for each of fiscal years 2019 through 2023.

(Pub. L. 107–171, title IX, §9013, as added Pub. L. 110–234, [title IX, §9001\(a\), May 22, 2008](#), 122 Stat. 1332, and Pub. L. 110–246, [§4\(a\), title IX, §9001\(a\), June 18, 2008](#), 122 Stat. 1664, 2094; amended Pub. L. 112–240, [title VII, §701\(f\)\(12\), Jan. 2, 2013](#), 126 Stat. 2366; Pub. L. 113–79, [title IX, §9012, Feb. 7, 2014](#), 128 Stat. 938; Pub. L. 115–334, [title VIII, §8644, Dec. 20, 2018](#), 132 Stat. 4873.)

## **CODIFICATION**

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

## **AMENDMENTS**

**2018**—Pub. L. 115–334 amended section generally. Prior to amendment, section related to the Community Wood Energy Program.

**2014**—Subsec. (a). Pub. L. 113–79, §9012(a), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Subsec. (b)(1)(C). Pub. L. 113–79, §9012(b), added subpar. (C).

Subsec. (d). Pub. L. 113–79, §9012(c), designated existing provisions as par. (1) and inserted heading, substituted "A State or local government that receives a grant under subparagraph (A) or (B) of subsection (b)(1)" for "A State or local government that receives a grant under subsection (b)", and added par. (2).

Subsec. (e). Pub. L. 113–79, §9012(d), substituted "2018" for "2013".

**2013**—Subsec. (e). Pub. L. 112–240 substituted "2013" for "2012".

## **EFFECTIVE DATE OF 2013 AMENDMENT**

Amendment by Pub. L. 112–240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112–240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

## EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of this title.

### §8114. Sun grant program

#### (a) Establishment

The Secretary shall establish and carry out a program to provide grants to the sun grant centers and subcenter specified in subsection (b)—

- (1) to enhance national energy security through the development, distribution, and implementation of biobased energy technologies;
- (2) to promote diversification in, and the environmental sustainability of, agricultural production in the United States through biobased energy and product technologies;
- (3) to promote economic diversification in rural areas of the United States through biobased energy and product technologies; and
- (4) to enhance the efficiency of bioenergy and biomass research and development programs through improved coordination and collaboration among—
  - (A) the Department of Agriculture;
  - (B) other appropriate Federal agencies (as determined by the Secretary); and
  - (C) land-grant colleges and universities.

#### (b) Grants

##### (1) In general

The Secretary shall use amounts made available under subsection (g) to provide grants to each of the following:

##### (A) North-central center

A north-central sun grant center for the region composed of the States of Illinois, Indiana, Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.

##### (B) Southeastern center

A southeastern sun grant center for the region composed of—

- (i) the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia;
- (ii) the Commonwealth of Puerto Rico; and
- (iii) the United States Virgin Islands.

##### (C) South-central center

A south-central sun grant center for the region composed of the States of Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

##### (D) Western center

A western sun grant center for the region composed of—

- (i) the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington; and
- (ii) insular areas (as defined in section 3103 of this title (other than the insular areas referred to in clauses (ii) and (iii) of subparagraph (B))).

##### (E) Northeastern center

A northeastern sun grant center for the region composed of the States of Connecticut, Delaware, Massachusetts, Maryland, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia.

##### (F) Western insular Pacific subcenter

A western insular Pacific sun grant subcenter for the region of Alaska, Hawaii, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

#### (2) Manner of distribution

##### (A) Centers

In providing any funds made available under subsection (g), the Secretary shall distribute the grants in equal amounts to the sun grant centers described in subparagraphs (A) through (E) of paragraph (1).

##### (B) Subcenter

The sun grant center described in paragraph (1)(D) shall allocate a portion of the funds received under paragraph (1) to the subcenter described in paragraph (1)(F) pursuant to guidance issued by the Secretary.



**(3) Failure to comply with requirements**

If the Secretary finds on the basis of a review of the annual report required under subsection (f) or on the basis of an audit of a sun grant center or subcenter conducted by the Secretary that the center or subcenter has not complied with the requirements of this section, the sun grant center or subcenter shall be ineligible to receive further grants under this section for such period of time as may be prescribed by the Secretary.

**(c) Use of funds****(1) Competitive grants****(A) In general**

A sun grant center or subcenter shall use 75 percent of the funds described in subsection (b) to provide competitive grants to entities that are—

- (i) eligible to receive grants under subsection (b)(7) of section 3157 of this title; and
- (ii) located in the region covered by the sun grant center or subcenter.

**(B) Activities**

Grants described in subparagraph (A) shall be used by the grant recipient to conduct, in a manner consistent with the purposes described in subsection (a), multi-institutional and integrated, multistate research, extension, and education programs on technology development and technology implementation.

**(C) Administration****(i) Peer and merit review**

In making grants under this paragraph, a sun grant center or subcenter shall—

- (I) seek and accept proposals for grants;
- (II) determine the relevance and merit of proposals through a system of peer review similar to that established by the Secretary pursuant to section 7613 of this title; and
- (III) award grants on the basis of merit, quality, and relevance to advancing the purposes of this section.

**(ii) Priority**

A sun grant center or subcenter shall give a higher priority to programs that are consistent with the plan approved by the Secretary under subsection (d).

**(iii) Term**

A grant awarded by a sun grant center or subcenter shall have a term that does not exceed 5 years.

**(iv) Matching funds required****(I) In general**

Except as provided in subclauses (II) and (III), as a condition of receiving a grant under this paragraph, the sun grant center or subcenter shall require that not less than 20 percent of the cost of an activity described in subparagraph (B) be matched with funds, including in-kind contributions, from a non-Federal source.

**(II) Exclusion**

Subclause (I) shall not apply to fundamental research (as defined in subsection (f)(1) of section 6971 of this title (as added by section 7511(a)(4)) <sup>1</sup>.

**(III) Reduction**

The sun grant center or subcenter may reduce or eliminate the requirement for non-Federal funds under subclause (I) for applied research (as defined in subsection (f)(1) of section 6971 of this title (as added by section 7511(a)(4)) <sup>1</sup> if the sun grant center or subcenter determines that the reduction is necessary and appropriate pursuant to guidance issued by the Secretary.

**(v) Buildings and facilities**

Funds made available for grants shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing building or facility (including site grading and improvement and architect fees).

**(vi) Limitation on indirect costs**

A sun grant center or subcenter may not recover the indirect costs of making grants under subparagraph (A).

**(2) Administrative expenses**

A sun grant center or subcenter may use up to 4 percent of the funds described in subsection (b) to pay administrative expenses incurred in carrying out paragraph (1).

**(3) Research, extension and educational activities**

The sun grant centers and subcenter shall use the remainder of the funds described in subsection (b) to conduct, in a manner consistent with the purposes described in subsection (a), multi-institutional and multistate—

- (A) research, extension, and educational programs on technology development; and

(B) integrated research, extension, and educational programs on technology implementation.

**(d) Plan for research activities to be funded**

**(1) In general**

Subject to the availability of funds under subsection (g), and in cooperation with land-grant colleges and universities and private industry, the sun grant centers and subcenter shall jointly develop and submit to the Secretary for approval a plan for addressing the bioenergy, biomass, and bioproducts research priorities of the Department of Agriculture and other appropriate Federal agencies at the State and regional levels.

**(2) Funding**

Funds described in subsection (c)(2) shall be available to carry out planning coordination under paragraph (1).

**(3) Use of plan**

The sun grant centers and subcenter shall use the plan described in paragraph (1) in making grants under subsection (c)(1).

**(e) Grant Information Analysis Center**

The sun grant centers and subcenter shall maintain a Sun Grant Information Analysis Center at the sun grant center specified in subsection (b)(1)(A) to provide the sun grant centers and subcenter with analysis and data management support.

**(f) Annual reports**

Not later than 90 days after the end of each fiscal year, a sun grant center or subcenter receiving a grant under this section shall submit to the Secretary a report that describes the policies, priorities, and operations of the program carried out by the center or subcenter during the fiscal year, including—

- (1) the results of all peer and merit review procedures conducted pursuant to subsection (c)(1)(C)(i); and
- (2) a description of progress made in facilitating the priorities described in subsection (d)(1).

**(g) Authorization of appropriations**

There is authorized to be appropriated to carry out this section \$75,000,000 for each of fiscal years 2008 through 2023, of which not more than \$4,000,000 for each fiscal year shall be made available to carry out subsection (e).

(Pub. L. 110–234, title VII, §7526, May 22, 2008, 122 Stat. 1274; Pub. L. 110–246, §4(a), title VII, §7526, June 18, 2008, 122 Stat. 1664, 2035; Pub. L. 113–79, title VII, §§7128(b)(5), 7516, Feb. 7, 2014, 128 Stat. 879, 903; Pub. L. 115–334, title VII, §§7414, 7614(b)(4)(A), Dec. 20, 2018, 132 Stat. 4819, 4836.)

## REFERENCES IN TEXT

Section 7511(a)(4), referred to in subsec. (c)(1)(D)(iv)(II), (III), means section 7511(a)(4) of Pub. L. 110–246.

## CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and not as part of title IX of the Farm Security and Rural Investment Act of 2002 which comprises this chapter.

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 8109 of this title prior to the general amendment of this chapter by Pub. L. 110–246.

## AMENDMENTS

**2018**—Subsec. (c)(1)(C)(iv)(IV). Pub. L. 115–334, §7614(b)(4)(A), struck out subcl. (IV). Text read as follows: "The matching funds requirement under section 3371 of this title shall not apply in the case of a grant provided by a sun grant center or subcenter under this paragraph."

Subsec. (g). Pub. L. 115–334, §7414, substituted "2023" for "2018".

**2014**—Subsec. (a)(4)(B). Pub. L. 113–79, §7516(a)(1), substituted "other appropriate Federal agencies (as determined by the Secretary)" for "the Department of Energy".

Subsec. (b)(1)(A). Pub. L. 113–79, §7516(a)(2)(A), struck out "at South Dakota State University" after "center".

Subsec. (b)(1)(B). Pub. L. 113–79, §7516(a)(2)(B), struck out "at the University of Tennessee at Knoxville" after "center" in introductory provisions.

Subsec. (b)(1)(C). Pub. L. 113–79, §7516(a)(2)(C), struck out "at Oklahoma State University" after "center".

Subsec. (b)(1)(D). Pub. L. 113–79, §7516(a)(2)(D), struck out "at Oregon State University" after "center" in introductory provisions.

Subsec. (b)(1)(E). Pub. L. 113–79, §7516(a)(2)(E), struck out "at Cornell University" after "center".

Subsec. (b)(1)(F). Pub. L. 113–79, §7516(a)(2)(F), struck out "at the University of Hawaii" after "subcenter".

Subsec. (c)(1)(B). Pub. L. 113–79, §7516(a)(3)(A), substituted "integrated, multistate research, extension, and education programs on technology development and technology implementation" for "multistate—

"(i) research, extension, and education programs on technology development; and

"(ii) integrated research, extension, and education programs on technology implementation".

Subsec. (c)(1)(C), (D). Pub. L. 113–79, §7516(a)(3)(B), (C), redesignated subpar. (D) as (C) and struck out former subpar. (C) which related to funding allocation.

Subsec. (c)(1)(D)(iv)(IV). Pub. L. 113–79, §7128(b)(5), added subcl. (IV).

Subsec. (d)(1). Pub. L. 113–79, §7516(a)(4)(A), struck out "in accordance with paragraph (2)" after "industry" and substituted "bioproducts" for "gasification" and "other appropriate Federal agencies" for "the Department of Energy".

Subsec. (d)(2) to (4). Pub. L. 113–79, §7516(a)(4)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2). Prior to amendment, text read as follows: "With respect to gasification research activity, the sun grant centers and subcenter shall coordinate planning with land-grant colleges and universities in their respective regions that have ongoing research activities in that area."

Subsec. (f)(1). Pub. L. 113–79, §7516(b), substituted "subsection (c)(1)(C)(i)" for "subsection (c)(1)(D)(i)".

Subsec. (g). Pub. L. 113–79, §7516(a)(5), substituted "2018" for "2012".

### **EFFECTIVE DATE OF 2018 AMENDMENT**

Amendment by section 7614(b)(4)(A) of Pub. L. 115–334 applicable to grants, cooperative agreements, or other awards made after Dec. 20, 2018, with matching funds requirement in effect on Dec. 20, 2018, to continue to apply to such grant, cooperative agreement, or other award, see section 7614(c) of Pub. L. 115–334, set out as a note under section 3151 of this title.

### **EFFECTIVE DATE**

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of this title.

### **DEFINITION OF "SECRETARY"**

"Secretary" as meaning the Secretary of Agriculture, see section 8701 of this title.

<sup>1</sup> So in original. Probably should be followed by a third closing parenthesis.

## **§8115. Carbon utilization and biogas education program**

### **(a) Definitions**

In this section:

#### **(1) Carbon dioxide**

The term "carbon dioxide" means carbon dioxide that is produced as a byproduct of the production of a biobased product.

#### **(2) Eligible entity**

The term "eligible entity" means an entity that—

(A) is—

(i) an organization described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of that title; or

(ii) an institution of higher education (as defined in section 1001(a) of title 20);

(B) has demonstrated knowledge about—

(i) sequestration and utilization of carbon dioxide; or

(ii) aggregation of organic waste from multiple sources into a single biogas system; and

(C) has a demonstrated ability to conduct educational and technical support programs.

### **(b) Establishment**

The Secretary, in consultation with the Secretary of Energy, shall make competitive grants to eligible entities—

(1) to provide education to the public about the economic and emissions benefits of permanent sequestration or utilization of carbon dioxide with a primary objective of providing benefits and opportunities for rural businesses, rural communities, and utilities serving rural communities; or

(2) to provide education to agricultural producers and other stakeholders about opportunities for aggregation of organic waste from multiple sources into a single biogas system.

**(c) Funding**

There are authorized to be appropriated for each of fiscal years 2019 through 2023—

(1) \$1,000,000 to carry out subsection (b)(1); and

(2) \$1,000,000 to carry out subsection (b)(2).

(Pub. L. 107–171, title IX, §9014, as added Pub. L. 115–334, [title IX, §9011](#), [Dec. 20, 2018](#), 132 Stat. 4887.)